THE PRECIOUS GARLAND AND THE SONG OF THE FOUR MINDFULNESSES

NGARJUNA AND KAYSANG GYATSO, THE SEVENTH DALAI LAMA

Translated by Jeffrey Hopkins and Lati Rimpoche with Anne Klein

Foreword by His Holiness the Fourteenth Dalai Lama

THE WISDOM OF TIBET SERIES 2

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THE

INDIAN LAW EXAMINATION MANUAL.

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INDIAN LAW EXAMINATION

MANUAL.

BY

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LONDON:

JOHN FLACK AND CO., 3, WARWICK COURT, HOLBORN

1873.

INTRODUCTION.

THE object of this work is to provide students with the subjects in which they have to be examined, in a shape easy to commit to memory.

The law of property current in Bengal, with reference to the Permanent Settlement; to the Government lien on land, &c.; the relation of landlord and tenant; and the Revenue laws in general of the different Presidencies and several Provinces, affecting as they do the very commonwealth of India (I say the commonwealth, because the real wealth of the country is, and has ever been agricultural, and because in the vast Mofussil, the end for which the vast majority of the masses live, is the tillage of the soil), is a subject requiring a treatise to itself, and must therefore be left for another volume. Moreover, this subject must necessarily be deferred for the present, as important Bills, relating to rent, land revenue, and the relief of estates from the usurer in the North Western Provinces of India, are now pending before the Council of the Governor-General.

In the Presidency towns advocates are required to

pass in "Common Law," and "Equity" papers. I have not added these subjects to the present volume, as they are already ably dealt with by Messrs. Wilson & Tyssen in "The Bar Examination Journal," published by Messrs. Butterworths, and this "Journal" is procurable in all the Presidency towns.

The series of questions and answers herein collected are taken from the general Acts having reference to India, in which :—

1.—The successful candidates for the Indian Civil Service competitive examination are examined.

2.—Also the subjects they have to take up in India for their Lower and Higher Standard Departmental examinations.

3.—Subjects taken up by staff corps and uncovenanted officers appointed to civil appointments in India.

4.—Subjects in which Moonsifs, Sudder Ameens, and Police officers are examined.

5.—Subjects in which Indian students are examined at the Inns of Court examinations.

6.—Subjects in which every person obtaining a certificate as Pleader, Attorney-at-Law, Advocate, or Vakeel in any part of British India, has to pass a satisfactory examination.

For this reason the questions herein given have been selected partly,—(1) from questions set for the Civil Service examinations; (2) partly from questions set for the Indian examination at the Inns of Court; (3) partly from questions set at the departmental examinations in India; (4) partly from questions set at the Pleader's

examination in India; and (5), to make the subject as full and exhaustive as possible, questions have been added so as to complete the continuity of the work. The questions are taken from the test books selected by the several Indian Governments and Local Governments, the several High Courts, and the Inns of Court. The answer to each question has been carefully prepared from such standard works, and references given to the authority for each answer. In every case the phraseology of the Acts referred to has been adopted, making the Manual reliable as a work of reference.

In some *few* instances, in answers to questions on the Code of Criminal Procedure, and the Evidence Act,—where the whole answer lies in a section, or part of a section, an extract of which *verbatim* would unnecessarily take up space, and which can equally well be referred to,—the section has been referred to by number. Such instances, though, are very rare, and do not occur more than a dozen times in the whole work.

The subjects of the Acts referred to in the Manual have been treated fully, not only as regards their contents, but also the principles on which the Acts are framed.

There is no work, it is believed, of a similar kind in India, although works of a similar nature abound in England. For instance, "The Bar Examination Journal," for students for the Bar; "The Preliminary,"

"The Intermediate," and "Final Examination Journals," for Solicitors; also Hallilay's "Questions and Answers;" "Questions and Answers to Stephen's Blackstone," now in its sixth edition; and "Questions on the Student's Hume," and Hallam, &c.

That a work of this nature is useful and popular amongst students in England is undoubted; that such a work will be of great assistance to students in India I cannot doubt; and this is one of my reasons for offering it to the student public,—a public which yearly includes within its number more and more of the educated youth of the country.

The subject dealt with in this Manual is somewhat large, comprising as it does the three great Codes, viz.—Criminal Procedure Code, Penal Code, and Code of Civil Procedure; and the *minor* Codes, if I may so call them, for they partake of the nature of Codes, viz.,—the Indian Succession Act, regulating the subjects of inheritance, the civil effects of marriage and testamentary power, "comprising in its 332 sections the principles contained in a whole library of law books, of which Jarman on Wills may be taken as a type"; the Indian Limitation Act, comprising the result of some 1,200 decisions passed in the course of ten years on Act XIV. of 1859; the Indian Evidence Act, which contains in a concise form, "and explicit and compendious language," every single proposition of law having

any application to India contained in "Taylor on Evidence," one of the largest books ever published; the Contract Act; also the Registration and Stamp Acts; Mortgage; and last, though not least, the subjects of Hindu and Mahomedan Law. My endeavour has been to treat these subjects concisely, and at the same time clearly and accurately, giving within as small a compass as practicable the pith and principles of the subjects dealt with. Brevity has been aimed at so far as this was procurable consistently with accuracy.

Of course an innumerable number of questions could be made out on the subjects dealt with in these few pages by asking the same questions in a different shape, and adopting different phraseology. My aim has been to omit no important point included in the laws referred to, and I venture to hope that any one who takes the trouble to get up all the points dealt with in this Manual, will not be asked many questions that he cannot answer, whatever form the questions set him may take.

The answers to the questions in Hindu and Mahomedan Law have been taken from the latest authorities, so as to include alterations and rulings to the latest date; and the most recent decisions of the Courts, so as to give the *existing* and not the *past* law. For this reason I have not taken answers from Chapter I. of Macnaghten's "Principles of Hindu Law," as that chapter maintains views which have been rejected by

the later decisions of the High Courts in India. For instance, compare the doctrine of *Factum valet* as given by Macnaghten with that given in the authorities quoted by Cowell in his Tajore Lectures of 1870-1871.

It is hoped that this series of questions and answers on subjects so general, and so necessary for all Indian students in India and England, intended as this Manual is, principally for the use of students, and touching as it does every branch of the law (the law of Landlord and Tenant, and certain Revenue laws above mentioned excepted) with which it is essential for them to be acquainted, may be useful in getting up the subjects herein brought together.

The object of this work being educational, and not like a text-book to refresh the memory, its contents have been put together in what appeared to me the most wieldy and practical form to aid students in acquiring a clear and satisfactory knowledge of the subjects dealt with.

The form, therefore, of Question and Answer has been adopted, on account of its being by far the easiest way of getting up a subject for the purpose of being examined therein.

FENDALL CURRIE.

78, *Addison Road, Kensington,*
15*th September*, 1873.

CONTENTS.

EXPLANATION OF ABBREVIATIONS.

Arch. C. P.	Archbold's Criminal Pleadings.
Aust. Jur.	Austin's Jurisprudence.
Bai. Im.	Baillie's Immameea.
Bai. Dig. M. L.	Baillie's Digest of Mahomedan Law.
Bai. Fut. Alum.	Baillie's Futawa Alumgeeree.
B. L. R.	Bengal Law Reports.
Bo. H. C. R.	Bombay High Court Reports.
Bro. C. C. P.	Broughton's Code of Civil Procedure.
C. C. P.	Code of Criminal Procedure.
E. B. S.	European British Subject.
Elb. H. L. Inh.	Elberling's Hindu Law of Inheritance.
F. R. N. S.	Fortnightly Review, New Series.
G. H. L. Man.	Grady's Hindu Law Manual.
G. M. L. Man.	Grady's Mahomedan Law Manual.
H. L. L. Cow.	Cowell's Hindu Law Lectures.
Ind. Cr. Codes	Currie's Indian Criminal Codes.
Inst. Men.	Institutes of Menu.
I. E. A.	Indian Evidence Act.
I. D.	Indian Digest.
I. P. C.	Indian Penal Code.
J. C. O.	Judicial Com. Oudh.
L. L.	Law of Limitation.
L. M. R.	Law Magazine and Review.
Leg. Max.	Legal Maxims.
Lyon L. I.	Lyon's Law of India.
Mac. H. L.	Macnaghten's Hindu Law.
Mac. M. L.	Macnaghten's Mahomedan Law.
Mac. P. and P. M. L.	Macnaghten's Principles and Precedents of Mahomedan Law.
Maine. An. L.	Maine's Ancient Law.
Mac. Mort.	Macpherson's Mortgages, 2nd, 3rd, and 5th Editions.
M. I. Ap.	Moore's Indian Appeals.
M. J.	Madras Jurist.
N. L. E.	Norton's Law of Evidence.
P. O.	Police Officer.
Rum. Ch. Inh.	Almaric Rumsey's Chart of Inheritance.
S. A.	Stamp Acts.
Suth. F. B. R.	Sutherland's Full Bench Rulings.
S. L. C.	Smith's Law of Contract.
Steph. Cr. L.	Stephen's Criminal Law of England.
Str. H. L.	Strange's Hindu Law.
S. D. A. Beng. N. W. P.	Decisions of the Sudr Dewany Adawlut, Bengal and North-Western Provinces.
S. W. R.	Sutherland's Weekly Reporter.
W. L. L.	Wharton's Law Lexicon.
W. R.	Weekly Reporter.
W.S.I.S.A.	Whitley Stokes' Indian Succession Act.

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CHAPTER I.

HINDU LAW.

1. *Q.* On what are the laws of the Hindus, civil and religious, believed by them to be founded; and to whom does the Hindu law apply; and under what circumstances does a man cease to be amenable to it?

A. On revelation, a portion of which has been preserved in the very words revealed, and constitutes the *Vedas*, esteemed by them as sacred writ. Another portion has been preserved by inspired writers, who had revelations present to their memory, and who have recorded the holy precepts for which a divine sanction is to be presumed. This is termed *smriti*, recollection (remembered law), in contradistinction to *sruti*, audition (revealed law). (3 L. M. R. 257.) The Hindu law has obligatory force *only* upon those who are Hindus by birth and by religion. When a Hindu changes his religion, and shows by his course of conduct after such change what rules and customs he has adopted, he is released from the Hindu law, and thenceforth governed by the law and usage of the class with which he has associated himself. (Abraham *v.* Abraham, 9 M. I. A. 227.)

2. *Q.* (*a*) Is the Hindu law a personal or a local law? (*b*) Has a Hindu a freedom of choice as to the particular "*shaster*" by which he will be governed? (*c*) Can he import into any country to which he migrates the particular law of his own tribe? (*d*) And what is the presumption of law as to his having retained or changed the "*shasters*" of his birth?

A. (*a*) A personal, not a local law; (*b*) yes; (*c*) yes; (*d*) the governing circumstance to be attended to in deciding by what law

he is bound being the intention, as manifested by the character of the purohit, ceremonies and usages, which he, or his descendants after him, retains about him. The real test to be applied is, by what "*shasters*" the customs and rites of marriages and funerals are conducted. Occasional and daily religious services may be changed without effecting a corresponding change in a Hindu's legal liabilities. (Koomudchunder Roy *v.* Seetakanth Roy, Suth. F. B. 75; Ranee Pudenavati *v.* Baboo Doolar Singh, 7 S. W. R. P. C. 41; H. LL. Cow. 1870, 4 to 6.)

3. *Q.* What are the chief characteristics of the Hindu community at the present day?

A. An aggregation of families rather than of individuals. Communality and co-ownership, and its divisions into four great *castes*, parcelled out by reference to the principles of (1) Religion, (2) War, (3) Industry, (4) Servitude. (H. LL. Cow. 6 to 8.)

4. *Q.* How many schools of law exist at the present day? Name them.

A. Five. (1) Bengal, (2) Mithila, (3) Benares, (4) Maharatta, and (5) Dravida.

5. *Q.* What are the peculiar authorities followed in Bengal, Mithila, Madras, and Bombay?

A. In Bengal, the Dayabhaga; in Mithila, the Vivada Chintamari; in Madras, the Mitakshara, and the Smriti Chandrika and the Madhavya; in Bombay, the Mayakha and the Kanstabha treatises. (H. LL. Cow. 16, 1870.)

6. *Q.* What are the sources of the Hindu law as administered in Hindu territories?

A. (1) The old traditional authorities; (2) the authoritative commentators; (3) the approved customs of the districts; and (4) (where all these fail), the exposition of law by learned Brahmins. (H. LL. Cow. 17, 1870.)

7. *Q.* How are the members of a "gotra," or family, connected?

A. By blood relationship, marriage, or adoption. (H. LL. Cow. 57, 1870.)

8. *Q.* Who is the "Guru" and who the "Purohit"? and what are their respective functions?

A. The "*Guru*" is the spiritual guide of the family, and the "*Purohit*" the priest who officiates at and presides over the perform-

ance of the religious ceremony. The former wield both a temporal and spiritual authority. They can expel a man from *caste*, or restore him: their benediction is equivalent to the remission of sins. The latter conduct worship and all ceremonies, assign names to new-born infants and calculate their nativity, bless new houses, walls, and tanks, purify and consecrate temples, and conduct marriages and funeral ceremonies.

9. *Q.* What is the doctrine as to the payment of "purohit's" fees?

A. Their services are the subject of contract. The hereditary office of purohit has been practically abolished. There is no legal obligation to contribute to expenses of the joint worship. (Shamloll Sett *v.* Hurroosoonderee Gooptu, 5 S. W. R. 29; H. LL. Cow. 65, 1870.)

10. *Q.* What is the ordinary method of providing for the support of idols, priests, and worship? Is this method recognized?

A. By endowment. Property so dedicated is known as *dewuttur* property. Such endowments are recognized, so long as they appear to have been *bonâ fide*,—real, not nominal endowments,—the criterion being publicity of the dedication or grant. (H. LL. Cow. 66, 1870.)

11. *Q.* How many descriptions of "muths" or temples are there? and how does the office of "mohunt" devolve in each case?

A. Three. (1) *Mouroosi*, (2) *Punchaite*, and (3) *Hakimi*. In the first, the office is hereditary; in the second, elective; and, in the third, vested in the ruling power, or in the party who endowed the temple. (H. LL. Cow. 70, 1870.)

12. *Q.* In what does the "*shraddha*," or funeral obsequy, consist? And what is the object of its performance?

A. These obsequies consist of oblations of food and libations of water offered to the manes of the Hindu's ancestors. The object in view is to effect, by means of oblations, the re-embodying of the soul of the deceased after burning his corpse. (H. LL. Cow. 71 to 80, 1870.)

13. *Q.* Define "*Stridhana*," and give its derivation.

A. From *sri*, female, and *dhana*, wealth. The separate property of a married woman, including gifts from her husband, his relations

or her own, or any other acquisition. (Man. H. L. 96, 109; Dayabhaga, chap. iv. s. 1, v. 4; H. LL. Cow. p. 84.) It has been held to include property which has devolved upon her by inheritance. (3 Madras H. C. Reports, 312.)

14. *Q.* State the different descriptions of Stridhana in the Bengal, Madras, Bombay, and Mithila schools.

A. They are the same in all four schools. The most comprehensive definition is given in the following text of Menu:—(1) What was given before the nuptial fire; (2) what was presented on the bridal procession; (3) what was given in token of love; and (4) what was received from a mother, a brother, or a father. (Mac. H. L. 41, 1870.)

15. *Q.* In the Bengal school does land given to a woman by her husband form part of her *stridhana?*

A. Yes; but she cannot alienate it. (H. LL. Cow. 84, 1870.)

16. *Q.* Can the wife alienate her *stridhana* during her coverture?

A. Over her *stridhana* generally the wife has sole power. She can alienate it during coverture. (H. LL. Cow. 84, 1870; 32, 1871.)

17. *Q.* Is the property which a married woman inherits from her husband on his death without male issue part of her *stridhana?* What is the nature of her interest in it?

A. No; she does not attain a full proprietary right of inheritance, but is only entitled to enjoy the estate under the guardianship of the next heirs of the deceased. A widow can only enjoy the estate subject to the control of her guardians. (H. LL. Cow. 193, 1870.)

18. *Q.* Illustrate the doctrine of "*factum valet quod fieri non debuit,*" and state to which of the schools it applies.

A. This doctrine is founded on a passage in the Dayabhaga, which says, "Slay not a Brahmin"; but if a man should kill one, the murder is committed, and it cannot be undone. Equity, however, requires that the dependants of the slain man be compensated. Similarly, if a Hindu in Bengal should give away to a stranger all his property, he commits a sinful act; but the gift being made, cannot be revoked. This maxim applies to the Bengal school only. A Hindu in Bengal may leave by will, or alienate in his lifetime, his possessions, whether inherited or acquired; and a gift or legacy, whether

to a son or stranger, will hold good, however reprehensible it may be as a breach of an injunction and precept. (H. LL. Cow. 97, 1870.) The Bengal law simply lays down, "That the thing is done; it cannot be undone." *Factum est illud; fieri infectum non potest; i.e.*, if a man makes a *bonâ fide* gift complete in every respect to a stranger, it is lawful, though morally reprehensible. (3 L. M. R. 260.)

19. *Q.* Name the different species of marriage.

A. (1) Brahma; (2) Diva; (3) Arsha; (4) Prajapatya; (5) Asura; (6) Gandharba, or love marriages; (7) Rakshasa, or forcible connection; and (8) Paisarha, where the marriage has been effected by fraud. The four first are peculiar to Brahmins; the fifth form is peculiar to Vaisyas and Sudras. It is an indissoluble contract, as well as a religious sacrament. (Mac. H. L. 62, H. LL. Cow. 164, 1870.)

20. *Q.* By what Act is the degradation of caste as a disqualification for inheritance abolished? And mention the Act which authorizes the re-marriage of widows, and state the provisions of the section.

A. (1) Act XXI. 1850; (2) Act XV. 1856, which says: "No marriage contracted with Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding. (Section 1.)

21. *Q.* On what is the Hindu law of adoption based?

A. On the spiritual necessities of the Hindu, the primary object being to save from Put, or Hell. The spiritual efficacy of the possession of a son, which in the remote ages was the paramount idea, has somewhat given place to the feeling that the existence of a son is desirable, because it renders the continued performance of rites during the long period for which they are enjoined more secure, and because, to ensure the continuance of his name and family, is an object always dear to the mind of a Hindu. (Man. H. L. 31; H. LL. Cow. 210, 1870.)

22. *Q.* Mention the different descriptions of property known to Hindu law.

A. (1) Into things personal, and (2) real, *i.e.*, things movable and immovable; (3) ancestral; and (4) self-acquired.

23. *Q.* Explain "Dwyamushayana," "Dattaka," "Kritrima," "Putra," "Patrica Putra."

A. (1) A child adopted after the ceremony of tonsure has been

performed becomes a Dwyamushayana, or child of two fathers. The absolute transfer being regarded as incapable of taking effect, such a child belongs to both families, inherits in both, and performs the obsequies in both. No one but the natural parents can give a child in adoption. The essential element in this species of adoption is an agreement, expressed or implied, between the natural and adoptive fathers, to this effect: "This is a son of both of us." The adopted son still continues a member of his own family, and partakes of the estate of his natural and adopting father. (H. LL. Cow. 243, 302, 341, 1870; Mac. H. L. 74.) (2) The Dattaka Mimansa and the Dattaka Chandrika are the standard authorities on the law of adoption. Anitya Datta is the name given to a son adopted in the Dattaka, from a different Gotra, after he has received the tonsure in his natural Gotra. Dattaka, then, is a form of adoption, or son given. When this form is completed, it can never be revoked. (H. LL. Cow. 16, 271, 342, 1870; Mac. H. L. 67.) (3) Kritrima, a form of adoption obtaining in the Mithila country, an innovation upon the established Dattaka form. The origin of the practice of this form of adoption is traceable to the prohibitory rule of *Vachespati*, that a woman could not, even with the previously obtained consent of her husband, adopt a son after his death in the Dattaka form. Colebrooke assigns its introduction to two pundits, whose motive was to save a confusion of families and names. To this form the only parties are the adopter and the adopted, and if he has attained his majority the assent of the adopted is essential. Such consent must be given in the life of the adopter. Equality of caste is the only condition of eligibility for a Kritrima adoption. (H. LL. Cow. 244, 261, 268, 299, 319, 321; Mac. H. L. 95; 5 Cole. Dig. iv. 10; 1 Marshall, p. 95.) (4) Putra, a son. "Since the son (trayate) delivers his father from the Hell named *Put*, he was therefore called Putra by Brahma himself. (Mac. H. L. 63; Menu, ix. 138.) (5) Patrica Putra is the appointed daughter; and her son is equal to a son whom a man has begotten on his wedded wife of equal class. The term Patrica Putra includes four persons; viz.—(*a*) the appointed daughter; (*b*) her son; (*c*) her son when she was given in marriage with an express stipulation that her son should belong to her father; and (*d*) a Dwya Mushyana. (H. LL. Cow. 212.)

24. *Q.* Define a "vested remainder" under the Hindu law.

A. A remainder to be vested under the law must be vested in interest. Hindu law knows nothing of a "vested estate" with a contingent interest. The Hindu law meaning of the word "vest," as applied to inheritance or estate, means the acquisition of an actual estate. Since under that law the estate cannot be carved out into parts or divisions by the creation of particular "estates" (in the English law sense of the term), a remainder after an estate tail, or

other "limited inheritance," is not vested in law—it is contingent. A remainder must be vested in interest and possession in contemplation of law; enjoyment may be deferred, but possession is immediate in contemplation of law; ownership according to Hindu law is entire and unconditional, and not susceptible of small divisions and of portions. There is no difference between an estate vested in fee either in whole or in part, and an estate vested in interest. In other words, "vested" is equivalent to unconditional. Hindu law does not countenance conditional gifts "as vested subject to be divested." (3 M. L. R. 259.)

25. *Q.* Explain "Nitya Dwya Mushyana," and "Anitya Dwyamushyana," and state the broad distinctions between them.

A. The latter is distinguished from the former in that the former is incompletely son of two fathers, the latter absolutely son of two fathers. The broad distinction between them is, that the issue of the former belongs to the adoptive, and of the latter to the natural family. (H. LL. Cow. 341, 342; Mac. H. L. 74.)

26. *Q.* What is the right of the parents with respect to giving a sum in Dattaka adoption?

A. According to Menu, a father has absolute power to give, the mother only being able to do so with her husband's consent. (9 Menu, verse 168.) Besides this authority for the father's absolute power, there is the direct authority of the Dattaka Mimansa (sec. ix. verse 13), and the absence of any prohibition in the Dattaka Chandrika.

27. *Q.* What is the law under the Dayabhaga, and what under the Mitakshara as to the power of a widow to adopt to her husband without his authority? Can the want of authority be supplied in any and what Presidencies, and how?

A. The three rules which embrace the whole law on the subject are: (1) That the husband's permission is always a sufficient authority to his widow to enable her to adopt, except in Mithila, where the Dattaka form has in practice been abolished. (2) That such permission in Bengal is essential, and cannot be dispensed with under any circumstances. (3) That by the followers of the Mitakshara, both in the Benares and the Mharashtra schools, the consent of the husband's kindred may be substituted when the husband has expressed no prohibition, and has merely failed or omitted to give his sanction. (H. LL. Cow. 262, 1870; Mac. H. L. 85.)

28. *Q.* What is the present state of the law in

Bengal, Madras, and Bombay as to the legality of an adoption of an only or eldest son?

A. The eldest son, as well the only son, cannot be given in adoption.

29. *Q.* What is the law with regard to the right of illegitimate sons to maintenance among,—(*a*) the three regenerate classes; (*b*) Soodras?

A. The illegitimate son, even of a man of the three regenerate tribes, is entitled to maintenance. (Mutuswamy Tagavera Yettappa Naiken *v.* Venkataswarra Yettappa, 2 B. L. R. P. C. 15; H. LL. Cow. 136.) An illegitimate son born of a low woman has a right to maintenance. (Inderpan Valumgpatty Taver *v.* Ramasawney Pandia Talser, 3 B. L. R. P. C. 4.) It is provided by law that the son by a Soodra woman of a man belonging to any of the three superior classes is entitled to maintenance. The same rules that apply to illegitimate children by Soodra women are applicable also to the spurious offspring of women in the inverse order of the classes. (H. LL. Cow. 171, 1870.)

30. *Q.* What effect has the want of chastity on the right to maintenance of,—(*a*) a married woman; (*b*) a widow?

A. The adulterous wife must be maintained. (Cole. Dig. B. iii. c. iv. s. 2, verse 18.) But a woman divorced for adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance after his death. (H. LL. Cow. 135, 170, 1870.) See also answer to questions 32, 35, *post.*

31. *Q.* What power has a wife to bind her husband by her contracts?

A. The wife's power to pledge her husband's credit, or to render him liable on her contracts on the ground of an implied agency, is the same in Hindu as in English law. (H. LL. Cow. 166, 1870.)

32. *Q.* What is the widow's right to maintenance? Is it superior or not to the right of partition and alienation?

A. Under *Mitakshara* law a Hindu widow's maintenance is a charge upon the whole estate in which her husband had a share, and therefore upon every part thereof. (4 Bo. H. C. R. 273.) It is superior to the right of partition, also of alienation. The widow's maintenance is also, according to the Bengal school, a charge upon the estate of her husband. (H. LL. Cow. 138, 1870.)

33. *Q.* Who are the widow's legal guardians? and what is her obligation to reside with her guardians?

A. The members of her husband's family, and she forfeits her claim to maintenance by withdrawing herself from their protection. But if less than her proper amount is afforded to her, and she seeks shelter under the roof of her parents, this has been held not to forfeit her right to maintenance. (H. LL. Cow. 138, 1870.)

34. *Q.* What is the widow's remedy for enforcing her right to maintenance?

A. According to the Bengal school, the ancestor's widow can follow the estate with her claim for maintenance out of it, and further there is the text of Katyayana:—"Except his whole estate and dwelling-house, what remains after the food and clothing of his family, a man may give away, whatever it be, whether fixed or movable; otherwise it may not be given." A Hindu widow can insist upon remaining in the family dwelling-house, and can also insist upon being maintained out of the joint estate, into whosoever hands that dwelling-house and estate may pass, unless when they are sold expressly to provide for the widow. (H. LL. Cow. 141, 1870.)

35. *Q.* What is the wife's right to maintenance?

A. The wife is entitled to maintenance. It has been held that a wife leaving her husband's house without sufficient cause, and especially if *she be an adulteress*, cannot claim maintenance. (Ilata Shavata *v.* Ilata Narayavan Nambri Divri, 1 Madras, 372.) She does not by a single act of disobedience, or even by leaving her husband's house and carrying on an independent calling, forfeit for ever her rights to maintenance. If she be ready to return to him, he is bound to maintain her. While apart from him, and unwilling to return, she is not entitled to be maintained by him. (H. LL. Cow. 142, 1870.) The rulings on this point are not unanimous.

36. *Q.* Besides the wife and mother, who are entitled to maintenance?

A. The stepmother, grandmother, son's widow, the unmarried daughter and sister not otherwise provided for; those who by reason of some incurable mental or physical disease are disqualified for inheritance; as also their children, wives, or unmarried daughters. With regard to outcasts and their issue, the authority of Yajnavalkya might be cited; but in their case maintenance is restricted to food and raiment. (H. LL. Cow. 149, 1870.)

37. *Q.* What is the widow's power of alienation?

A. She cannot aliene her husband's estate without the consent of

the reversionary heirs. In default of reversionary heirs, the Crown, as the ultimate reversioner, has the same power as the heir would have. Under the *Mithila* school she has power to consume, give, or sell the movables, but has no power over the immovables beyond a moderate enjoyment of them. In Toolsey Doss *v.* Doocowerban the Bombay High Court said she had "uncontrolled power over the movables, but nothing more than a life use in the immovable estate." Under the Bengal school the doctrine established was, that "the widow, in Bengal, has the entire right of property vested in her, both in the movable and immovable estate; that she is morally bound to take the advice of her husband's kindred, but is under no legal disability if she do not take or follow such advice." The Privy Council, in Kasheenath Bysack *v.* Hurcosomdery Dorsee declared the widow entitled to the possession of both, and that she could not be deprived of it by the husband's relations. Her right to possession is absolute, and cannot be restricted; and that she was only entitled to enjoy it according to the rights of a Hindu widow. (H. LL. Cow. 198, 1870.)

38. *Q.* What is the character of the Hindu system of adoption?

A. Essentially a contract between parents, who assume to give and take the absolute property of a child. Neither registration, nor any written evidence of the act, nor the sanction of any Court of Justice, or any ruling power, is essential to its validity. Nevertheless, the utmost publicity is usual, and its absence suspicious. (H. LL. Cow. 224 to 226, 1870.)

39. *Q.* How far is the ceremonial incidental to an adoption, or any portion of such ceremonial, necessary in order to effect a valid adoption?

A. If once the fact of adoption is established, the Courts will not inquire into the performance of the secular, and possibly not into the performance of religious ceremonies, merely for the purpose of testing its validity. There must be gift and acceptance manifested by some *overt* act; that overt act, as prescribed by Menu, being the pouring of water. Beyond this there is nothing absolutely necessary. (H. LL. Cow. 227, 1870; I. Str. H. L. iv. 94; 9 Menu, verse 168.)

40. *Q.* What constitutes adoption for civil purposes?

A. Gift and acceptance *actual;* constructive gift and acceptance is not sufficient. (*Vide* answer to question 39; also H. LL. Cow. 230 to 234, 1870.)

41. *Q.* Who may adopt? And who not?

A. Any Hindu destitute of male issue, that is, to whom no son

has been born, or whose son has died. (Man. H. L. 33.) "By a man destitute of a son only, must a substitute for the same always be adopted." (Dattaka Mimansa, chap. i. v. 3.) A man adopting must be of age. In the case of a woman it must be with consent of her natural protector, in Bengal her husband exclusively. Unmarried men may adopt. Impotent and excluded persons may adopt.

Minors and lunatics may not adopt. (H. LL. Cow. 251 to 256, 1870; Man. H. L. 36 to 46.)

42. *Q.* Who are "Sapindas," "Sammodocas," "Saculyas," "Bandhus"? that is, define these terms.

A. "*Sapindas*" of two descriptions—through consanguinity *and* connection by funeral oblations. The word in its ordinary meaning denotes connection through the *pinda*, or funeral cake.

"*Sammodocas.*"—Kindred connected by a common libation of water.

"*Saculyas.*"—The cognates above the fourth degree in ascent, or distant kinsmen.

"*Bandhus*," *i.e.* kinsmen sprung from a different family, but allied by funeral oblations. (H. LL. Cow. 124 to 130, 1870.)

43. *Q.* What is meant by "Heritage" in Hindu law?

A. That wealth which becomes the property of another solely by reason of relation to the owner. (Man. H. L. 137.) Heritage (Daya) is so defined in the Mitakshara: "The owner" is of course the *previous* owner.

44. *Q.* What are the rights of the natural father to inherit property acquired by adoption?

A. None. The members of the family which he has quitted have no title to succeed to such estate. They are entire strangers to his estate, ancestral or self-acquired. (H. LL. Cow. 357, 1870.)

45. *Q.* What is the point, with reference to adoption, which has been decided in Rungama *v.* Atchama? 4 Moore's Ind. Ap. p. 1.

A. The invalidity of a second adoption while the first adopted child is living. (H. LL. Cow. 292, 1870.)

46. *Q.* When may the son be adopted by two individuals?

A. The *dwyamushayana*, except, perhaps, in the case of the only son of a brother, may be said to be abolished. (H. LL. Cow. 342 1870.)

47. *Q.* What is the decision of the Privy Council in the case of Dhurm Dass Panday *v.* Musst. Shama Somderee Debiah? 3 Moore's Ind. Ap. p. 229.

A. The result of an act of adoption by a Hindu widow is, that the whole property is divested from her, and vested in the adopted son. She retains possession of her husband's property not as heir but as guardian and trustee of the adopted son. Her interest in the estate is cut down to the widow's right to maintenance. (H. LL. Cow. 283, 1870.)

48. *Q.* (*a*) What is the effect of adoption? And (*b*) in determining the validity of the adoption, what is a court of law bound to inquire into?

A. (*a*) As respects *Kritrima* adoption, a son so adopted retains the right of succession, and of presenting the funeral cake in his natural family, while he also acquires the same rights in his adoptive family. As respects *Dattaka* adoption, a child so adopted ceases to have any connection with his natural family, except that he cannot marry a member of it. He is incapable of performing the funeral rites of his natural father, and ceases to have any claim upon the family or estate. He represents the real legitimate son in relationship to his adoptive mother, and her ancestors are his maternal grandsires. (*b*) The adopter having no male issue; the consent of the parties; the child being eligible; gift and acceptance.

49. *Q.* What are the three chief points to be considered in actions brought against the heirs of an estate?

A. The debt must be for a good consideration; must be a ready-money transaction; if incurred for marriage or any other ceremonies, it must have been reasonable in amount. (Man. H. L. 75.)

50. *Q.* How long does minority last?

A. The completion of the sixteenth year generally throughout India. In Bengal, the commencement of the sixteenth year, *i.e.* the completion of the fifteenth year. Various authorities, including Raghunandana, concur in fixing the sixteenth year as the limit of minority. (H. LL. Cow. 173, 1870, and Mac. H. L. 117.) But this point is a somewhat disputed one, and the subject has never been definitely settled. The result of legislative enactment is, that in Bengal and Bombay, the person, male or female, attains to independence at the age of eighteen, but in other parts of India sixteen is the age of majority, except in the Madras Presidency, where a Regulation provides the age of eighteen for those who are proprietors paying rent to Government. Although eighteen is *possibly* the age of majority, according to the Indian Succession Act, for all persons

domiciled in India, except Hindus, Mahomedans, and Buddhists, and although various Regulations and Acts have provided with respect to a large number, perhaps the majority, of Hindus and Mahomedans, eighteen shall also be the age of majority, yet there is another portion of the Hindu and Mahomedan community to whom those Acts and Regulations do not apply, and a residuum still left of those communities to whom it is a matter of doubt and perplexity what is the age at which their disabilities cease. (H. LL. Cow. 179, 1870.) The Registration Act and the Contract Act, in which Minor is supposed to be defined, leave matters as they were. Why the law in India on this important point is not as clear as the law in England is a mystery—one which will probably shortly be solved by an enactment making eighteen the age of majority.

51. *Q.* Who may contract marriage?

A. The restrictions upon the right to contract a marriage depend upon considerations of relationship or caste. A woman may not marry a man of a caste beneath her; a man may marry in his own caste, or in an inferior one. In the present age, according to Mr. Sutherland, marriage with one unequal in class is prohibited. The High Court of Bengal affirmed this principle in the case of Nelaram Nedgal *v.* Termam Bannen (9 S. W. R. 552); but the Madras High Court took a different view. They say, although the law recommends a marriage with a woman of equal class as a preferable description of marriage, yet the marriage of a woman of a lower caste than himself appears not to be an invalid marriage, rendering any issue illegitimate. (Pandaiya Tilava *v.* Pulitilava, 1 Madras, 478; H. LL. Cow. 167, 1870.)

52. *Q.* If property be derived by the wife from a stranger, or earned by herself, in whom will it vest on her death? Will it follow the line of succession of *Stridhana?*

A. The general rule is, that it vests in the husband, and is unreservedly at his disposal. It will not follow the line of Stridhana. (H. LL. Cow. 27, 1871.)

53. *Q.* What powers have the husbands and others over woman's property?

A. The *Stridhana* belongs to the woman exclusively, but the husband has a concurrent power over it, so that he may use it in any exigency for which he has not otherwise the means of providing, and this without being accountable afterwards for what he may have so applied. (Strange, vol. i. p. 27; H. LL. Cow. 28, 1871.)

54. *Q.* State concisely the effect of the decision in

Abraham *v.* Abraham, 9 Moore's Ind. Ap. p. 195.

A. Parcenership may be put an end to by severance effected by partition. It is equally put an end to by a severance which the Hindu law recognizes and creates; *e.g.*, an outcast, one who has renounced his religion or who has become a convert to Christianity. (H. LL. Cow. 50, 1871.)

55. *Q.* What is the rule laid down by the Privy Council in the Shiva Gunga case with regard to the undivided portion of an estate?

A. That the right of survivorship applied only to undivided property. (H. LL. Cow. 107 to 112, 1871.)

56. *Q.* What is the effect of an agreement to divide?

A. For a definition of partition see Cowell's Tajore Lectures, 1871, pp. 60 to 64. The effect of such an agreement in Bengal, the actual ascertainment of each member's share, with a view to separate enjoyment. In the other schools, the effect appears to be a division of title, not necessarily a division of enjoyment. In the latter it is more a declaratory decree than a specific one. (H. LL. Cow. 60 to 64, 1871.)

57. *Q.* What are the essentials in a civil point of view of a contract of marriage?

A. Betrothal. The matrimonial contract in itself fixes the relation of the contracting parties as married. The binding circumstances essential to the completion of a marriage are gift and acceptance of the girl. (Man. H. L. 21; Str. H. L. 7.)

58. *Q.* What would a Court of Justice consider a justification of the absolute severance of the contract of marriage?

A. Adultery of the wife. (Man. H. L. 22.)

59. *Q.* What is the meaning of the "Reflection of a son"?

A. The son of a woman upon whom, if he were begotten by the adoptive father, he would not be the production of an incestuous intercourse. (Man. H. L. 47.)

60. *Q.* What is the ruling canon with respect to persons who may be adopted?

A. That no boy can be adopted with whose mother the adopter could not have married. (Man. H. L. 47.)

61. *Q.* When an adopted son dies without issue, to whom will the property which he inherited from his adoptive father pass?

A. To the natural heirs of the latter. (Man. H. L. 54.)

62. *Q.* Suppose an adoption should prove invalid, what would be the rights of the boy with reference to the property of his adoptive and natural fathers?

A. An invalid adoption does not sever the person so adopted from his natural rights. (Bawani Śavkara Pandit *v.* Ambabay Ammal, 1 Mad. H. C. R. 363.)

63. *Q.* Under what circumstances does the order of succession to Stridhun vary?

A. According to the condition of the woman and the means by which he becomes possessed of the property. (Man. H. L. 121.)

64. *Q.* What has the Privy Council declared in the case of Doorendronath Roy *v.* Musst. Heramonee Burwoneah to be the primary consideration in determining the rule which is to govern the right of succession?

A. The right to perform the Shraddha.

65. *Q.* Can an agreement between two heirs to divide be enforced by an action at law by the widow of one of them?

A. Yes. (Man. H. L. 193.)

66. *Q.* What power of alienation has a man under the Bengal school? and by whom may joint property be alienated?

A. A man may dispose of his property, movable or immovable, ancestral or self-acquired, as he pleases, by gift, sale, or will. (H. LL. Cow. 4, 1871.) By all the members of the family jointly. (*Id.* 70.)

67. *Q.* What was the point settled by the Bombay High Court in Trimbak Anant *v.* Gopal Shet regarding the power to carry on a family trade?

A. That in an undivided Hindu family comprising infant mem-

bers, the manager might sell family property to carry on the trade, if such an act be necessary and for the general good. (H. LL. Cow. 9, 1871.)

68. *Q.* What is the point of difference between the Bengal and Mitakshara schools as to the restrictions imposed on alienation by a widow?

A. The former school restricts her with regard to movables and immovables; the latter only enforces those restrictions with respect to immovables, both ancestral and self-acquired. (H. LL. Cow. 17, 1871.)

69. *Q.* What is necessary to effect a valid transfer of property?

A. Relinquishment *and* acceptance. Mere relinquishment is not sufficient. The donee must be a sentient being and must be clearly designated. (H. LL. Cow. 38, 1871.)

70. *Q.* What is the mother's power to alienate her deceased husband's estate during her son's minority?

A. Such alienation to raise means to pay the father's debts and for support held to be legal under Hindu law. (H. LL. Cow. 19, 1871.)

71. *Q.* Are "benamee" transactions as to alienations valid? and in such a case what is the criterion of ownership?

A. Yes. The criterion is by whom was the purchase-money paid? (H. LL. Cow. 39, 1871.)

72. *Q.* What is the mode in which a transfer or conveyance may be effected as between Hindus by the Hindu law?

A. It is not actually necessary that a contract or conveyance should be in writing; proof of a verbal grant of land, whether by exchange, sale, or gift, is good when followed by possession. Such gift resembles a grant by the English law of chattels, real or personal, before the Statute of Frauds. (H. LL. Cow. 43, 1871.)

73. *Q.* What is the rule of law as to the construction of deeds when produced?

A. That they ought to be liberally construed. The literal sense not to be regarded so much as the real meaning of the parties. (H. LL. Cow. 43, 1871.)

74. *Q.* Name some of the things which by Hindu law are deemed to be impartible.

A. A Raj; a Polliam, *i.e.* a tract of country subject to a petty chieftain; self-acquisitions made without aid from the joint stock of the undivided family; buildings constructed by one member on the joint estate; gains of science. (H. LL. Cow. 52 to 59, 1871.)

75. *Q.* Who has a right to call for a partition?

A. The doctrine in Bengal is that every member of a joint undivided family has an indefeasible right to demand partition of his own share. The other members must submit *nolens volens*. (H. LL. Cow. 71, 1871.)

76. *Q.* What is the effect of two widows of the same man partitioning their deceased husband's estate?

A. The effect is merely to divide the enjoyment; the title remains joint, the surviving widow takes the whole. (H. LL. Cow. 86, 1871.)

77. *Q.* After a partition can there be a reunion? if so, what constitutes a reunion?

A. Yes; reunion is recognized by Hindu law. To constitute reunion there must be a junction of estate; living in one residence or carrying on joint trade is not sufficient. A reunion by descendants appears not to be a reunion in the sense of the Hindu law. (H. LL. Cow. 87 to 94, 1871.)

78. *Q.* What are the causes which lead to exclusion from inheritance?

A. (1) Those which spring from a man's conduct and lead to his expulsion; and (2) those which are derived from a man's natural state or condition, disqualifying him for the performance of those spiritual acts which are to benefit the soul of the deceased. (H. LL. Cow. 186, 1871.)

79. *Q.* Name some of the defects of natural state or condition which disqualify a man from inheriting.

A. Idiocy, blindness, dumbness, leprosy, unchastity, offspring of incestuous intercourse (H. LL. Cow. 189 to 196); an impotent person, an outcast, one lame, born blind or deaf, or who has lost the use of a limb, a madman, an idiot, one incurably diseased (Man. H. L. 86). Besides the above, Strange gives—a devotee, illegitimate offspring, save among Sudras. (S. Man. H. L. 39.)

80. *Q.* A died leaving a widow and one son B; the widow of A re-married in her son B's life-time; after her re-marriage B died. At B's death was his mother entitled to succeed to his estate, or had she lost her interest as her son's heir by her re-marriage?

A. Under the provisions of Act XV., 1866, she is entitled to succeed to her son B's estate. (H. LL. Cow. 199, 1871.)

81. *Q.* How many modes are there of acquiring property?

A. Seven. (1) Succession; (2) occupancy or donation; (3) purchase or exchange; (4) conquest; (5) lending at interest, husbandry, or commerce; (6) acceptance of presents; and (7) from respectable men. (Inst. Men. 239; Man. H. L. 66.)

82. *Q.* Name the encumbrances with which an estate is chargeable.

A. (1) Debts and other obligations in the nature of legacies; (2) certain specific duties to be provided for out of the estate where it has descended to a single heir, and out of the common fund where it has vested by survivorship in undivided coheirs; (3) maintenance of all requiring and entitled to it. (Man. H. L. 69.)

83. *Q.* How do sons inherit who are born after partition?

A. They succeed to the father's share, to the exclusion of the divided sons. (Man. H. L. 146.)

84. *Q.* What is the status and right of the sons of an Englishman by a Brahman woman living apart from her husband?

A. The sons are Hindus. (Man. H. L. 147.)

85. *Q.* What are the modes of disposition of property recognized by the Hindu law?

A. (1) By partition; (2) by alienation or gift; (3) by will. (Man. H. L. 191.)

86. *Q.* What is the presumption of law with respect to a joint undivided family as to the estate?

A. That the whole property is joint estate. The onus lies on the party claiming to establish the fact that the property is his separate property. (Man. H. L. 192.)

87. *Q.* What is the widow's interest in the accumulations of her husband's estate?

A. According to all the older authorities on Hindu law, accumulations must be treated in the same way as the *corpus;* and by the ruling in re Grose *v.* Amritamayi Dasi (4 B. L. R. 40), it was held that it should be so treated in the absence of any distinct authority to the contrary. (H. LL. Cow. 203, 1870.)

88. *Q.* If a man die leaving more than one widow,—say three widows, how does his property vest in them?

A. The property is considered as vesting in only one individual; the survivor or survivors take the property on the death of either of the widows, and no part vests in the other heirs of the husband until after the death of all the widows. (H. LL. Cow. 204, and see also answer to question 76, *ante.*)

89. *Q.* A man leaves three widows,—are they entitled by right to a partition of their husband's estate?

A. No, not entitled. They can by agreement provide for the distributive enjoyment by an apportionment between themselves, but cannot interfere with one another's right to survivorship, nor affect the rights of their husband's heirs to succeed to the whole estate at the death of the last surviving widow. (H. LL. Cow. 207.)

90. *Q.* Under what circumstances may a man give his widow power to adopt? and when does a man's right to make a second adoption accrue?

A. In case of the failure at any time of his legitimate male issue, whether begotten or adopted. If he survives the first adoption. (H. LL. Cow. 276, 1870.)

91. *Q.* Is there such a thing as conditional adoption, or a conditional power to adopt? if so, what legally forms a condition on the happening of which such authority can be exercised?

A. No such thing as conditional adoption; but a conditional power to adopt is of frequent occurrence, and extends to legalize the practice of successive adoptions. The condition must be the death of one son before another can be adopted. No other circumstances, such as disagreement between the son and his adoptive mother or stepmother, are proper conditions. (H. LL. Cow. 276, 1870.)

92. *Q.* To what class of property does the Hindu's power of testamentary disposition apply?

A. Under the Mitakshara school, throughout Bengal, a man who is the absolute owner of property may dispose of it by will as he pleases, whether it be ancestral or not. Even in Madras it is settled that a will of property *not ancestral* may be good. With regard to ancestral property, the Privy Council laid down that it is subject to be disposed of by will, unless by reason of some inherent peculiarity it be withdrawn from the testamentary power. The broad and general principle appears to be, that in all cases where a man is able to dispose of his property by act *inter vivos*, he may also dispose of it by will. (H. LL. Cow. 1871, pp. 232 to 239.)

93. *Q.* What is the limit of the Hindu's testamentary power? or, in other words, what is the limit of his disposing power? and how is this power regulated?

A. The Hindu Wills Act, XXI. of 1870, has placed this power under statutory regulation so far as regards wills executed after the 1st September, 1870, in the Lower Provinces of Bengal, and in the towns of Madras and Bombay; otherwise, the extent of the testamentary power of disposition by Hindus is regulated by Hindu law. (H. LL. Cow. 1871, pp. 240 to 263.)

94. *Q.* Can trusts be created by will? if so, to what extent?

A. In re Kumara Asima Krishna Deb *v.* Kumara Kumara Krishna Deb, it was laid down, that, "putting out of the question the case of religious endowments, a devise by a Hindu which would be void as a condition is void in the shape of a trust." There is nothing contrary to the spirit and principles of the Hindu law in a devise to trustees which gives a beneficial interest to a person to whom it might have been given by a simple devise without the intervention of trustees. (H. LL. Cow. 1871, pp. 252 to 260.)

95. *Q.* Can a Hindu by will create a qualified or particular estate?

A. There is nothing in the spirit or principles of Hindu law against the creation of particular estates. In the case of Rewun Persad *v.* Musst Radha Beeby, the Privy Council held that the widow took an estate for life, and that the two sons of the testator's brother each took a vested interest in a moiety of the estate so devised to the widow, expectant upon the termination of her life-interest therein. (N.B. In this case all the devisees were in existence at the time of the testator's death.) (H. LL. Cow. 1871, 261.)

96. *Q.* Can a Hindu by his will create a perpetuity?

A. In Juggutsomdery's case (8 M.I.A. 66) the Judicial Committee gave effect to the rule against perpetuities. By the latest decisions it appears that "the extent of the testamentary power of disposition by Hindus must be regulated by Hindu law." So that, whether the Hindu law warrants the creation of a perpetuity, either by a will or deed of gift *inter vivos* must depend upon the Hindu law alone. (H. LL. Cow. 1871, 262.)

97. *Q.* State generally the changes effected by Act XXI. of 1870, regulating the mode of drawing up and executing of a Hindu's will.

A. (1) It abolishes, within the territories subject to the Act, nuncupative wills from the date mentioned in the Act; (2) the sections in the Indian Succession Act relating to privileged wills, which alone could be by word of mouth, are not by the Hindu Wills Act made to apply to the case of Hindus; (3) the only sections* made applicable to them provide that a testator *must* execute his will by signing or affixing his mark to his will, or authorizing some other person to sign for him in his presence; (4) and with reference to attestation, it is now the law that a Hindu will, effected by the Hindu Wills Act, must be attested by two or more witnesses, each of whom must have seen the testator duly execute the will by himself or by his deputy, &c. (H. LL. Cow. 1871, 270 to 272.)

98. *Q.* What are the powers inherent in the offices of executor or administrator of the will of a deceased Hindu?

A. They stand in the position of ordinary managers; their powers being those which are incident to that position, unless, in the case of a will, they are by the terms thereof restricted or enlarged. An executor, moreover, takes no estate in his capacity of executor; the title to the estate of the deceased vests in him, as trustee thereof, only so far as the testator has so directed. (H. LL. Cow. 1871, 278.)

99. *Q.* What is the position of the executor and administrator under the Hindu Wills Act?

A. He becomes the statutable representative of the deceased. He is the deceased's legal representative for all purposes, and all the deceased's property vests in him as such; and, further, the appointment may be express or by necessary implication. (Sections 179 and 182 Indian Succession Act.)

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* Sections 50, 51, 57, 58, and 59, Indian Succession Act.

100. *Q.* What are the executor or administrator's rights?

A. (1) He has the same power to sue in respect of all causes of action that survive the deceased; (2) to distrain for all rents due to him at the time of his death as the deceased had when living; (3) and also power to dispose of the property of the deceased, either wholly or in part, as he thinks fit. (Sections 267, 269, Indian Succession Act.)

101. *Q.* What are the executor's or administrator's rights?

A. He is bound, within six months of probate or administration, to exhibit to the Court from which he got such grant an inventory containing a full and true estimate of all the property in possession, and all the credits and debts, and in like manner, within twelve months, to exhibit an account of the estate, showing the assets to hand and how they have been applied or disposed of. (Section 277, Indian Succession Act.)

102. *Q.* Are there any provisions, or is there any presumption under the Hindu law with regard to executors *de son tort?*

A. With regard to executors *de son tort,* the Hindu law makes no provision and raises no presumption. (H. LL. Cow. 1871, 284.)

CHAPTER II.

MAHOMEDAN LAW.

1. *Q.* State the sources of the Mahomedan Law.

A. The original source is the "Koran." Besides the "Koran," a number of precepts and apologues which casually fell from the lips of Mahomed were collected after his death from ear witnesses and transcribed into a book called the "Soneia" or "Oral Law." The Mahomedan law may be said to be written and unwritten; the former contained in many recognized treatises of Mahomedan law, the latter gathered from the practice of the country, as expounded by the law officers in cases for which there was no positive written law. There are the different *Fatawa*, or expositions of law by writers of acknowledged authority,—the *Fatawa Alumgeree*, or *Fatawa-i-Hind*, &c. The Mahomedan law may be divided into two parts: (1) relating to spiritual, and (2) to temporal matters; the former comprehending the rights and ceremonies of religion; the latter, what is usually comprised under the heads of Civil, Criminal, and International law. (Bai. F. Alum, Int. viii.)

2. *Q.* Name the schools of law which chiefly prevail in India. State some of the leading differences between them.

A. (1) Soonee; (2) Sheeah. The former is of the Huneefa sect, and chiefly prevails in India: the latter is the earlier as a school of law. *Differences:* (1) *Hanifites* regard the presence of witnesses as essential to a valid contract of marriage, the *Sheeahs* do not. (2) The *Sheeahs* make no difference between invalid and void marriages. (3) With regard to the servile marriage, according to the *Hanifites*, the right must be permanent by the woman being the actual property of the man; according to the *Sheeahs*, the right may be temporary: it is nothing more than the right of sexual intercourse which every master has with his slaves. (4) As to repudiation, the *Hanifites* recognize two forms, the *Soonnee* and *Budawa*, whereas the *Sheeahs* recognize only one form. (5) Further, the *Hanifites* do not require intention when express words are used; while, according to the *Sheeahs*, both intention and the presence of two witnesses in all cases are essential. (6) With regard to parentage, maternity is established, according to the *Hanifites*, by birth alone, without regard to the connection of the parents being

lawful; according to the *Sheeahs*, it must in all cases be lawful. (7) As to "Nusub," or descent,—according to the *Hanifites*, it is enough if the information be received from two just men, or one just man and two just women, while the *Sheeahs* require such testimony from a considerable number of persons in succession. (8) As to *Shoofa*, or pre-emption, according to the *Hanifites*, the right may be claimed—(1) by a partner in the thing, (2) by a partner in its rights of way and water, (3) by a neighbour. The claim of this third the *Sheeahs* reject.—(9) As to inheritance,—according to the *Hanifites*, the impediments are—(*a*) slavery, (*b*) homicide, (*c*) difference of religion, and (*d*) difference of *Dar*, or country. The *Sheeahs* recognize (*a*) and also (*b*) with some modification, *i.e.*, the homicide must be intentional, *i.e.* murder. For (*c*) they substitnte infidelity and (*d*) they reject entirely. (Bai. Im., Introduction.)

3. *Q.* State the several legal sharers. How many sharers are there male and female?

A. Three males and seven females. (1) father, (2) true grandfather, (3) uterine half-brother, (4) daughter, (5) son's daughter, (6) mother, (7) true grandmother, (8) sister, (9) consanguine half-sister, (10) uterine half-sister. (G. M. L. Man. 28 to 33.)

4. *Q.* Into how many classes have Mahomedan lawyers divided heirs? Name them.

A. Three. (1) Sharers; (2) agnates, or residuaries; (3) uterine relations, or distant kindred. (G. M. L. Man. 24.)

5. *Q.* Why are they called sharers?

A. Because a certain share of the estate is expressly allotted to each of them in the Koran. (Siraj, 2, 57.)

6. *Q.* If no sharers be living, who take the property?

A. The whole property devolves on the residuaries. (G. M. L. Man. 100.)

7. *Q.* Who take the residue where there are no residuaries? and on failure of sharers and residuaries, among whom is the property distributed?

A. In the first case the residue is divided among the sharers, exclusive of the husband and wife; in the latter case, among the distant kindred.

8. *Q.* Should there be none of the distant kindred living and capable of inheriting, and there is no widow or widower, who succeeds?

A. (1) The "successor by contract;" (2) "acknowledged kindred." (G. M. L. Man. 25.)

9. *Q.* In case of the descent of the property to "acknowledged kindred," what are the three conditions to be observed?

A. (1) The declaration must be such as at least to imply the descent of the person acknowledged from some other person than the acknowledger himself. (2) It must not describe the descent of the acknowledged kinsman, as assented to by the supposed common ancestor, when that is not the case. (3) It must not be retracted by the acknowledger in his lifetime. (G. M. L. Man. 26.)

10. *Q.* In the event of the failure of the five previous classes, who next succeeds? and who is the ultimate successor?

A. (1) The "universal legatee;" (2) the Government. (G. M. L. Man. 27.)

11. *Q.* What is the number of sharers?

A. Twelve. (G. M. L. Man. 28.)

12. *Q.* How many characters has the father? Enumerate them.

A. Three. (1) Mere sharer; (2) mere residuary; (3) sharer and residuary. (G. M. L. Man. 28.)

13. *Q.* How many characters has the mother? Enumerate them.

A. Three. (1) The child or son's descendant, or with two or more brothers; (2) where there are none of these; (3) where the deceased has left a husband or wife, or both parents. (G. M. L. Man. 30.)

14. *Q.* Enumerate the three classes of residuaries by kindred.

A. (1) Those in their own right; (2) those in another's right; (3) those together with another. (G. M. L. Man. 38, 39.)

15. *Q.* What is the order of succession according to the Suni school?

A. (1) Sharers; (2) residuaries; (3) distant kindred; (4) successors by contract; (5) acknowledged kindred; and (6) universal legatee.

16. *Q.* Explain the terms *mutamásil*, *mutadakhil*, *mutawáfik*, and *mutabayin?*

A. Numbers are said to be—(1) *mutamásil*, or equal, where they exactly agree; (2) *mutadakhil*, or concordant, where the one number being multiplied, exactly measures the other; (3) *mutawáfik*, or composite, where a third number measures them both; and (4) *mutabayin*, or prime, where no third number measures them both. (Mac. M. L. 165.)

17. *Q.* How many rules of distribution are there? and into how many classes are they divided?

A. Seven,—divided into two classes; the *first* containing Rules 1, 2, and 3, which depend upon a comparison between the number of heirs and the number of the shares; and Rules 4, 5, 6, and 7, upon a comparison of the numbers of the different sets of heirs, after a comparison of the number of each set of heirs with their respective shares. (Mac. M. L. 166.)

18. *Q.* Give an example of each of the above seven rules.

A. First, where the heirs are a father, a mother, and two daughters, the shares of the parents is one-sixth and that of the daughters two-thirds. *Second*, a father, a mother and ten daughters. *Third*, a father and mother and five daughters. *Fourth*, a case of six daughters, three grandmothers, and three paternal uncles. *Fifth*, four wives, three grandmothers, and twelve paternal uncles. *Sixth*, four wives, eighteen daughters, fifteen female ancestors, and six paternal uncles. And *Seventh*, two wives, six female ancestors, ten daughters, and seven paternal uncles.

(N.B.—These cases once worked out by the principles laid down in sections iv. and v. pp. 163 to 173, Mac. M. L., will show the student clearly the meaning of the above rules.)

19. *Q.* Define inheritance, or *furaiz*.

A. Furaiz is the plural of *fureezut*, a derivative from *furz*, which means "appointment, precision, explanation," and is applied in law to anything that is established by precise and conclusive evidence. (G. M. L. Man. 1.)

20. *Q.* Were there any, and what causes of exclusion from inheritance? Do any of these still exist?

A. Yes. Four causes: (1) slavery; (2) homicide; (3) difference of religion; and (4) difference of allegiance. Nos. 1, 3, and 4 no longer exist. Homicide is a bar, but only so far as to exclude the slayer from inheriting the property of the slain. (G. M. L. Man. 6.)

21. *Q.* What is the effect of adoption amongst Mahomedans?

A. Similar to that amongst the English. It confers no right of inheritance: adopted children are entitled to nothing more than what their adoptive father gives them.

22. *Q.* When the deceased has left two daughters or two sisters, how will the case be settled?

A. The two daughters will divide the whole equally, they get two-thirds as sharers, and as there are no residuaries, they get the rest as the "Return." The sisters take similarly, on the same principle.

23. *Q.* Suppose A should die leaving a widow, who becomes possessed of his land in proprietary right, and the widow die leaving an uterine sister, and a sister by the same father only, how will the property devolve?

A. The property goes to the heirs of the widow. There is no difference here between the uterine and the consanguine sister.

24. *Q.* With regard to inheritance, is there any difference between real and personal, ancestral and self-acquired property?

A. No; no distinction at all. (Mac. M. L. 151.)

25. *Q.* Is there any law of primogeniture? Do females share in the inheritance?

A. Primogeniture confers no superior right. Yes; females share in the inheritance. (Mac. M. L. 151.)

26. *Q.* What are the sources, according to the Shia doctrine, from which the right of inheritance proceeds?

A. (1) Consanguinity, *nusub*, which is *kurabut*, or kindred; (2) by virtue of marriage; (3) by virtue of *wula*, *i.e.* the relation between the master (or patron) and his freed-man, and the relation between two persons who have made a reciprocal testamentary contract. (G. M. L. Man. 2, and Mac. P. and P. M. L. 34.)

27. *Q.* To how many classes of claimants is the estate of a deceased person liable before the heirs are entitled to distribution of the inheritance? Name them.

A. Three. (1) Undertakers, for funeral expenses; (2) debtors; and (3) legatees. (G. M. L. Man. 4.)

28. *Q.* In what case has the legatee priority over the heir?

A. When the articles out of which the legacy is to be paid are homogeneous, as money, goats, and generally such commodities as are estimable by weight or measurement of capacity. (G. M. L. Man. 5.)

29. *Q.* There being two descriptions of exclusion or disqualification for inheritance, state the effect of the disqualification upon the person who is subject to it.

A. Absolute exclusion from the right of inheritance. (G. M. L. Man. 7.)

30. *Q.* Who are the heirs not liable to exclusion?

A. Parents, children, husband, and wife. (G. M. L. Man. 7.)

31. *Q.* How does the property of a female slave devolve?

A. On her own heirs. (Mac. P. and P. M. L. 85.)

32. *Q.* Would the Mahomedan mother of an illegitimate child succeed to his property, he having died intestate, after attaining to man's estate, leaving neither wife nor legitimate child? If not, who would?

A. No. In default of heirs, the property passes to the Crown. (The Secretary of State *v.* Admin.-General Bengal, B. L. R. 87.)

33. *Q.* Explain the meaning of "right of representation," and the ground on which it does not obtain in Mahomedan law.

A. It means the right to represent an heir of the deceased who had died before him or her. This right does not obtain in Mahomedan law, the nearer of kin excluding the more remote. (G. M. L. Man. 23; Mac. P. and P. M. L. 9 and 96.)

34. *Q.* Is there any *jus repræsentationis?* Let A die, leaving two sons, B and C, and a grandson D by another son, who predeceased A, how would A's property be divided?

A. The grandson D does not take *jure repræsentationis*. The property will be divided between B and C.

35. *Q.* What is meant by saying that "the shares of the sharers may be *equal*, or *less*, or *more* than the shares of the property"? Give an example of a case where they are *equal*, where *less*, and where *more*.

A. It means that the sum of the fractions that represent the shares are equal to, or less, or more than an integer, or whole number; *e.g. Equal;* A dies leaving two full sisters and two half-sisters. Two full sisters' share $= \frac{2}{3}$, and the two half-sisters' shares equal $\frac{1}{3} = \frac{3}{3}$; or two full-sisters, one half-sister, and a residuary.

Less.—A dies leaving two full-sisters and a mother. Two full-sisters $= \frac{2}{3}$, mother $= \frac{1}{6}$, and there is no residuary; so they also take what remains. This is a case of *Return*.

More.—B dies leaving a husband with two full-sisters and a mother $= \frac{2}{3}$ and $\frac{1}{2}$. In this case the shares of the property are raised to the number of the shares of the sharers.

36. *Q.* Who are excluded from legally getting any return? And who are entitled to the return?

A. Husband and wife excluded. Persons entitled are (1) mother, (2) grandmother, (3) daughter, (4) son's daughter, (5) full-sister, (6) half-sister by father, and (7) half-brother or sister by the mother.

37. *Q.* Give MacNaghten's definition of "the increase"?

A. The increase is where there are a certain number of legal sharers, each of whom is entitled to a specific portion, and it is found on a distribution of the shares into which it is necessary to make the estate, that there is not a sufficient number to satisfy the just demand of all the claimants. (Mac. P. & P. of M. L. 88.)

38. *Q.* How is "the return" defined in the Sirajjigah?

A. The return is the converse of the increase, and it takes place in what remains above the shares of those entitled to them, when there is no legal claimant of it. This surplus is returned to the sharers, according to their rights, except the husband and wife. (Sirajigah, 20.)

39. *Q.* Why is it necessary to have recourse to the doctrine of "the Increase" and "Return" in the distribution of a Mahomedan's property?

A. The reason is clearly and concisely given by Mr. Rumsey as follows:—"It is obvious that in a system involving the division of unity into a number of arbitrary fractional parts, it may happen that the fractions, when added together, are sometimes greater, and sometimes less, than the whole. The former contingency of course occasions a difficulty whenever it occurs, the latter only when there are no residuaries. The doctrine of the 'Increase' provides for the former class of cases, and that of the 'Return' for the latter." (Rum. Chart M. Ih. 25, 2nd edition.)

40. *Q.* In how many cases does "the increase" occur? Specify them.

A. It takes effect in three cases: (1) Either when the estate should be made into six shares, (2) or when it should be made into twelve, or (3) when it should be made into twenty-four; *e.g.* (1) where six is the least common denominator, the number of shares may be increased to seven, eight, nine, or ten; (2) when twelve, the number may be increased to thirteen, fifteen, or seventeen; and (3) when twenty-four, the number may be increased to twenty-seven. (Mac. P. & P. 67, 68, 69, and 89.)

41. *Q.* Why is it that the four extractors 2, 3, 4, 8 never increase?

A. Because in all cases in which they are required the estate is either exactly commensurate with the claims upon it, or there is a surplus after the shares have been satisfied. (96 G. M. L: Man. quoting Bail. Int. p. 91.)

42. *Q.* How does MacNaghten define "the Return"?

A. Where, there being no residuaries, the surplus, after distribution of the shares, returns to the sharers.

43. *Q.* In how many cases does it take effect? Give an illustration of each case.

A. It takes effect in four cases:—

(1) One class of sharers only with those not entitled to claim; *e.g.*, two daughters or two sisters. The surplus is made into as many shares as there are sharers, and divided equally.

(2) When there are two classes or more and no residuary; *e.g.*, a mother and two daughters $= \frac{1}{6} + \frac{2}{3} = \frac{5}{6} + \frac{1}{6}$. Of this the mother takes $\frac{1}{6}$ and the daughters $\frac{2}{3}$. The surplus $\frac{1}{6}$ must be made into 6, of which the mother takes 2 and the daughters 4.

(3) One class of sharers associated with those not entitled to claim a return; *e.g.*, a husband and three daughters. Husband's share $= \frac{1}{4}$. Divide estate into four parts. Husband takes $\frac{1}{4}$ part, daughters $\frac{3}{4}$ part. But if there be six daughters, or $\frac{1}{4}$ each, the parcels 3, and

the number of sharers 6, is commensurable by 3. Divide the individuals $6 \div 3 = 2$, and multiply the extractor 4 by the quotient $2 = 8$ parcels. Husband's $\frac{1}{4} = 2$, and the daughters get 1 each; but if there be no common measure, multiply the extractor 4 by the whole *number* (of individuals), $4 \times 5 = 20$.

(4) When there are two or more classes of sharers associated with those not entitled to claim a return, *e.g.*, extract share of person who has not right to participate in the return. If the remaining parcels quadrate with the number of sharers, there is no necessity for any further process than to make the distribution among them.

When they do not quadrate, multiply the extractor of the case by the aggregate of these shares, and the product will be the number of parcels out of which shares can be extracted without a fraction. A leaves a wife, two daughters, and a grandmother. The wife's share $= \frac{1}{8}$. The least number of parcels into which the estate is to be divided $= 8$. After setting apart 1 for the widow, 7 remain, for two daughters and one grandmother.

Daughters' share . $= \frac{2}{3} = \frac{4}{6}$,
Grandmother's share $= \frac{1}{6}$.

Aggregate of the shares, reduced to fractions of the same denomination, $= 5$.

Seven parcels cannot be distributed among 5 persons without a fraction; so multiply the extractor 8×5. The aggregate of the shares $= 40$.

$\frac{1}{8}$, or 5 parcels, to the widow.
$\frac{4}{5}$, or 28 parcels, to the daughter.
$\frac{1}{5}$, or 7 parcels, to the grandmother.

44. *Q.* Who would exclude the widower and widow from a share of the return?

A. No one.

45. *Q.* In how many cases does the return occur? Specify them.

A. In four cases: (1) where there is only one class of shares unassociated with those not entitled to claim the return; (2) where there are two or more classes of sharers unassociated with those not entitled to claim the return; (3) where there is only one class of sharers associated with those not entitled to claim the return; and, (4) where there are two or more classes of sharers associated with those not entitled to claim the return. (Mac. P. & P. M. L. 92, 93, 94.)

46. *Q.* Define "*Huk Shaffa.*"

A. The right of pre-emption. In law it is a right to take possession of a purchased parcel of land for a similar (in kind and quality), of the price that has been set on it to the purchaser. (Bail. Dig. M. L. 471.)

to place the wife under the dominion of the husband; to confer on her the right of dower, maintenance, and habitation. (Mac. M. L. 215.)

60. *Q.* When will marriage be presumed without the testimony of witnesses?

A. In case of proved continual cohabitation. (Mac. M. L. 216.)

61. *Q.* Are there any, and what prohibited degrees?

A. Mother, grandmother, mother-in-law, stepmother, stepgrandmother, daughter, grand-daughter, daughter-in-law, grand-daughter-in-law, sister, foster-sister, niece, aunt, nurse. Nor may a man be married at the same time to any two women who stand in such a degree of relation to each other as that, if one of them had been a male, they could not have intermarried; or a slave of the party. (Mac. M. L. 216.)

62. *Q.* Can a female contract herself in marriage?

A. Yes, if she have attained the age of puberty. (Mac. M. L. 216.)

63. *Q.* Who can enter into a contract of marriage on behalf of an infant?

A. Father or grandfather. Where there is no paternal guardian, the maternal kindred may dispose of an infant in marriage. (Mac. M. L. 217.)

64. *Q.* When does dower become due?

A. On the consummation of marriage, or on the death of either party, or on divorce. (Mac. M. L. 217.)

65. *Q.* Where no amount of dower has been stipulated, what is the woman entitled to receive?

A. A sum equal to the average rate of dower granted to the females of her father's family. (Mac. M. L. 217.)

66. *Q.* How may a wife be divorced?

A. The divorce must be repeated three times, and between each time the period of one month must have intervened.

A vow of abstinence made by a husband, and maintained inviolate for a period of four months, amounts to a divorce. There is another species of divorce, which is effected by the husband comparing his wife to any member of his mother, or some other relation prohibited to him, technically termed *zihar*. (Mac. M. L. 218.)

67. *Q.* Can a husband receive back and cohabit with a wife three times irreversibly divorced?

A. Not until after she shall have been married to some other individual, and separated from him by death or divorce. (Mac. M. L. 218.)

68. *Q.* What would be presumptive evidence of legitimacy?

A. Acknowledgment of paternity. (Mac. M. L. 219.) Celebration of pregnancy and birth of son. (7 W. R.) *Pater est quem nuptiæ demonstrat* (3 M. I. Ap. 245), *i.e.*, birth in wedlock. The acknowledgment of paternity above referred to may be formal or inferred from conduct.

69. *Q.* Is it necessary to prove a marriage in order to establish legitimacy?

A. No.

70. *Q.* An ante-nuptial child is illegitimate. In such case how would the status of legitimacy be acquired?

A. By the father's acknowledging the child as his son. (Mac. M. L. 219.)

71. *Q.* What is the distinction with reference to a married woman between the English, Hindu, and Mahomedan laws?

A. Under the English and Hindu laws the husband and wife are considered one, and the wife's power to pledge the husband's credit, or to render him liable on her contracts on the ground of an implied agency, is the same in Hindu as in English law; whereas, according to Mahomedan law, the husband and wife are considered as distinct persons, who may have separate estates, contracts, debts, and injuries. (M. L. 15; H. LL. Cow. 165, 1870.)

72. *Q.* Can illegitimate children inherit property? if so, from whom do they inherit?

A. From their mothers and mothers' kindred. (M. L. 15.)

73. *Q.* Can a husband recover possession of a wife who leaves him without his consent? if so, how?

A. Yes, by a suit in the Civil Courts to enforce his marital rights by compelling his wife to return to cohabitation. (G. M. L. Man. 237.)

74. *Q.* Are there any impediments to marriage recognized by the Mahomedan law?

A. Yes. (1) Consanguinity; (2) affinity; (3) fosterage; (4) religion; (5) slavery; and (6) previous marriage. (G. M. L. Man. 239.)

75. *Q.* Can marriage be enforced specifically?

A. No. Whether written or oral, it cannot be specifically enforced. (G. M. L. Man. 241.)

76. *Q.* Does claim to dower take precedence of claim to inheritance?

A. Yes. (G. M. L. Man. 248.)

77. *Q.* Can a widow take possession of her husband's real estate in lieu of her dower?

A. Not without the consent of the heirs, or competent judicial authority. (G. M. L. Man. 249.)

78. *Q.* Is there any distinction between money and other property in cases of dower?

A. Yes, this distinction, that the widow can take the money, over which she has absolute power; but as to the other property, she is entitled to a lien on it as security for the debt, and it does not become her property absolutely without the consent of the heirs, or a judicial decree. (G. M. L. Man. 250.)

79. *Q.* Is it possible for the right of the heirs to be destroyed in real property as dower?

A. Yes, by alienation of the land for dower, because dower is a debt, and debts must be first liquidated out of the estate. (G. M. L. Man. 252.)

80. *Q.* Define "sale."

A. A mutual and voluntary exchange of property for property, includes barter and also loan, when the articles lent are intended to be consumed and replaced to the lender by a similar quantity of the same kind. (Mac. P. & P. M. L. iii. 1, and note from Baillie.)

81. *Q.* How is a contract of sale effected? And how many kinds of sale are there?

A. Effected by the express agreement of the parties or by reciprocal delivery. Four kinds—(1) consisting of commutation of goods for goods; (2) of money for money; (3) of money for goods; and (4) goods for money. (Mac. P. & P. M. L. iii. 2, 3.)

82. *Q.* What are the four denominations of sales?

A. (1) Absolute; (2) conditional; (3) imperfect; (4) void. (Mac. P. & P. M. L. iii. 4.)

83. *Q.* By the sale of land, what on the land does not pass with the land?

A. Nothing therein which is of a transitory nature passes; *e.g.* fruit on trees belongs to seller, though the tree appertains to the purchaser of the land. (Mac. P. & P. M. L. iii. 23.)

84. *Q.* What constitutes a sale? And who are competent to sell?

A. Tender and acceptance. The parties to all contracts, including sale, must have a sense of the obligation of the contract into which they enter. A minor, with the consent of his guardian, or a lunatic in his lucid intervals, may be contracting parties. (G. M. L. Man. 159; Mac. P. & P. M. L. iii. 11.)

85. *Q.* How is remedy against the seller lost?

A. If the purchaser after discovery of the defect make use of the article or attempt to remove the defect. (G. M. L. Man. 163.)

86. *Q.* How long does minority continue?

A. Until after the expiration of the sixteenth year, unless symptoms of puberty appear at an earlier age. (Mac. M. L. 220.)

87. *Q.* How many kinds of guardians are there?

A. Guardians are either natural or testamentary; they are also near and remote. (Mac. M. L. 221.)

88. *Q.* What rights have mothers and widows to the custody of their children?

A. Mothers (and widows *durante viduitate*) of their sons until seven years of age, of their daughters until they attain the age of puberty. (Mac. M. L. 222.)

89. *Q.* Under what circumstances is a guardian at liberty to sell the immovable property of his ward?

A. (1) When he can obtain double its value; (2) where the minor has no other property, and the sale of it is absolutely necessary to his maintenance; (3) where the late incumbent died in debt, which cannot be liquidated but by the sale of such property; (4) where there are some general provisions in the will which cannot be carried

into effect without such sale; (5) where the produce of the property is not sufficient to defray the expenses of keeping it; (6) where the property may be in danger of being destroyed; (7) where it has been usurped, and the guardian has reason to fear that there is no chance of fair restitution.

90. *Q.* Define "Gift." And what conditions are necessary to constitute a gift?

A. "A gift" is the conferring of property without a consideration. Acceptance and seizin on the part of the donee, and relinquishment on part of the donor, are essential to constitute a gift. (Mac. M. L. 208.)

91. *Q.* What is necessary as to the subject of the gift? Can a gift be made of a thing to be produced *in futuro?*

A. The subject of the gift must be actually in existence at the time of the donation. No. A gift cannot be made of anything to be produced *in futuro.* (Mac. M. L. 208.)

92. *Q.* Can a gift be either express *or* implied?

A. It cannot be implied. It *must be express* and unequivocal. (Mac. M. L. 209.)

93. *Q.* Are there any exceptions to the rule that a gift is null and void where the donor continues to exercise any act of ownership over it?

A. Yes. In the case of a house given to a husband by a wife; also in the case of property given by a father to his minor child. (Mac. M. L. 209.)

94. *Q.* When are formal delivery and seizin of a gift not necessary?

A. (1) In the case of a gift to a trustee, having the custody of the article given; (2) in the case of a gift to a minor. (Mac. M. L. 209.)

95. *Q.* When is a gift viewed in the light of a legacy? And to what extent does such a gift take effect?

A. A death-bed gift. It cannot take effect for more than a third of the property. (Mac. M. L. 209.)

96. *Q.* Can a death-bed gift be made to one of several heirs?

A. No; because it is not lawful for one heir to take a legacy without the consent of the rest. (Mac. M. L. 209.)

97. *Q.* Give the instances in which a donor cannot resume his gift.

A. (1) Where the donee is a relation; (2) nor where anything has been received in return; (3) nor where it has received any accession; (4) nor where it has come into the possession of a second donee; and (5) nor into that of the heirs of the first. (Mac. M. L. 209.)

98. *Q.* What are (1) *Hiba-bil-Iwaz* and (2) *Hiba-ba-Shart-ul-Iwaz?*

A. (1) The first is a mutual gift, or gift for a consideration. It resembles a sale in all its properties; the same conditions attach to it, and the mutual seizin of the donees is not, in all cases, necessary. (2) The latter is a gift on stipulation, or on promise of a consideration, and resembles a sale in the first stage only; the seizin of the donor and donee *is* a requisite condition. (Mac. M. L. 210.)

99. *Q.* What does "an Endowment" signify? Is an endowment a fit subject of sale, gift, or inheritance?

A. An endowment signifies the appropriation of property to the service of God, when the right of the appropriator becomes divested, and the profits of the property so appropriated are devoted to mankind. No; not a fit subject of sale, gift, or inheritance. (Mac. M. L. 228.)

100. *Q.* Under what circumstances may endowed property be sold?

A. By judicial authority, when the sale is absolutely necessary to defray the expense of repairing its edifices, or other indispensable purposes, and where the object cannot be attained by farming or other temporary expedient. (Mac. M. L. 228.)

101. *Q.* A makes a grant in the name of the children of B, with reversion to the poor; B has no children. Is this a valid grant?

A. Yes. In the case of such a grant it is not necessary that the grantees specified shall be in existence at the time. The profits of the endowment will be distributed among the poor. (Mac. M. L. 228.)

102. *Q.* Can the superintendent of an endowment appoint his own successor?

A. Only where the appropriator of the endowment has not made any express provision for his successor on the death of the person nominated by him, and has left no executor, the superintendent can appoint his own successor, subject to the confirmation of the ruling power. (Mac. M. L. 229.)

103. *Q.* When can the specific property endowed be exchanged for other property?

A. Only (1) when a stipulation to this effect has been made by the appropriator; or (2) circumstances should render it impracticable to retain possession of the particular property; or (3) if manifest advantage be derivable from the exchange.

104. *Q.* Are there any circumstances under which the injunctions of the appropriator may be disregarded?

A. Yes. (1) If he stipulate that the superintendent is not to be removed, such person is removable nevertheless for misconduct. (2) If he stipulated that the land shall not be let out to farm for a longer period than one year, and a tenant cannot be obtained for so short a time, and a longer lease would promote the interests of the establishment, the ruling authorities can act without the consent of the superintendent. (3) If he stipulate that excess of the profits be distributed among persons who beg for it in the mosque, it may, nevertheless, be distributed in other places, and among the necessitous, though not beggars. (4) If he stipulate that daily rations of food be served out to the necessitous, the allowance may, nevertheless, be made in money. (Mac. M. L. 230.)

105. *Q.* Is there any difference between a written and a nuncupative will as to preference shown to the one or the other?

A. No; they are entitled to equal weight, whether the property which is the subject of the will is real or personal. (Mac. M. L. 211.)

106. *Q.* Is there any difference between property which is the subject of inheritance, and that which is the subject of legacy?

A. Yes; the former becomes the property of the heir by mere operation of law; the latter does not become the property of the legatee until his consent shall have been obtained, either expressly or impliedly. (Mac. M. L. 211.)

107. *Q.* What is the maximum amount of his estate

that a Mahomedan can give as a legacy? And in what order of payment do claims to (1) inheritance, (2) legacies, and (3) debts come?

A. Legacies cannot be made to a larger amount than one-third of the testator's estate without the consent of the heirs. (1) Debts; (2) legacies to a legal amount; and (3) inheritance. (Mac. M. L. 211.)

108. *Q.* Is it necessary that the subject of the legacy should exist at the time of the execution of the will?

A. No; it is sufficient for its validity that it should be in existence at the time of the death of the testator. (Mac. M. L. 212.)

109. *Q.* Is the general validity of a will affected by its containing illegal provisions?

A. No; it will be carried into execution as far as it may be consistent with law. (Mac. M. L. 212.)

110. *Q.* A bequeaths property to B in January, 1865; and in 1867 makes a bequest of the same property to C. What effect has the subsequent bequest on the former one?

A. The bequest to B is annulled thereby. (Mac. M. L. 212.)

111. *Q.* Where a legacy is left to A, and subsequently a larger legacy is left to A, which legacy takes effect? Also, if it is just the other way, and the smaller legacy is the later of the two?

A. In both cases the later legacy takes effect. (Mac. M. L. 213.)

112. *Q.* Where no executor is appointed by will, who may act as executor?

A. The father or the grandfather, or, in their default, their executors. (Mac. M. L. 213.)

113. *Q.* To what extent are heirs answerable for the debts of their ancestors?

A. As far as there are assets. (Mac. M. L. 231.)

114. *Q.* A and B jointly contract a debt of 100 rupees, and before payment B dies; will A be held responsible for the whole amount borrowed?

A. No; only for a moiety of the debt, unless there was any stipulation to the effect that each should be liable for the whole amount. (Mac. M. L. 231.)

115. *Q.* Is the rule the same when two partners are engaged in traffic, contributing the same amount in capital, and being equal in all respects?

A. No; in such a case the one partner is responsible for all acts done and for all debts contracted by the other. (Mac. M. L. 232.)

CHAPTER III.

CODE OF CRIMINAL PROCEDURE.

ACT X. OF 1872.

1. *Q.* (*a*) Where a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to Act X. of 1872, and is inconsistent with the provisions of Act X. of 1872, is the procedure laid down in such special or local law repealed by reason of its inconsistency? (*b*) And what is the procedure to be followed in *miscellaneous* criminal cases and proceedings?

A. (*a*) No, not even by implication. (Sec. 2, Act X. 1872.) (*b*) The procedure prescribed by Act X. 1872, so far as it can be followed. (Section 539, *id.*)

2. *Q.* How are notifications published, and orders made under any section of any Act repealed by Act X. of 1872, deemed to have been published and made?

A. Under the corresponding section of this Act. (Sec. 2, Act X. 1872.)

3. *Q.* Define "Special Law" and "Local Law."

A. The former means a law applicable to a particular subject; the latter, a law applicable to a particular part of British India. (Sect. 4, Act X. 1872.)

4. *Q.* What are termed "inquiries" under the Code of Criminal Procedure, and when is a "trial" said to commence?

A. From the definition of "trial," taken with that of "inquiry"

and "inquired into," proceedings taken in court prior to the drawing up of a charge are "inquiries;" but when a charge has been drawn up, *then* the "trial" commences. (Section 4, Act X. 1872.)

5. *Q.* Define "Judicial proceeding," "Criminal Court," "Province," "Presidency Town," and "High Court."

A. Section 4, Act X. 1872.

6. *Q.* When is a case to be considered a Magistrate's case or a Session case?

A. Cases specified in column 7 of the fourth schedule to Act X. of 1872, as cases triable by magistrates, *and all cases which magistrates try themselves, although they might have committed them for trial to a Court of Session.* (Section 4, Act X. 1872.)

7. *Q.* Define "Cognizable offence or case" and "Non-cognizable offence or case;" also "Bailable offence or case" and "Non-bailable offence or case."

A. Section 4, Act X. 1872.

8. *Q.* (*a*) How many grades of criminal courts are there, and what are they? (*b*) Define Magistrate of the District, also Magistrate of a Division of a District.

A. (*a*) Five grades. (1) The High Court; (2) Court of the Magistrate of the Third Class; (3) Court of Magistrate of the Second Class; (4) Court of Magistrate of the First Class; (5) the Court of Session. (Section 5, Act X. 1872.) (*b*) Sections 35 and 40, Act X. of 1872.

9. *Q.* What jurisdiction have the Criminal Courts in offences created by "Special" and "Local" laws which are silent as to the tribunal intended?

A. Such offences may be inquired into and tried by the Criminal Courts appointed under Act X. of 1872, and according to the provisions of that Act; but no Court is to inflict a punishment in excess of its powers. (Section 8, Act X. 1872.)

10. *Q.* Do all portions of the Code of Criminal Procedure apply to European British subjects?

A. Offences committed by European British subjects must be inquired into and tried according to the provisions of chapter vii. of

Act X. of 1872, and not otherwise; but the other provisions of the Act apply to all persons, without distinction of race, unless a contrary intention is expressed. Except in respect of these special privileges, the provisions of the C.C.P. are applicable to all persons alike. (Section 11, Act X. 1872.)

11. *Q.* How are Courts of Session constituted? and what is the power of the Local Government with regard to these Courts? and what are the powers of such Courts as to trying and sentencing offenders?

A. Every province must be divided into sessions divisions. The Local Government have power to alter from time to time the number or extent of such divisions. The Sessions Court has power to try *any* offence, and to pass upon any offender any sentence authorized by law. (Sections 12, 14, and 15, Act X. of 1872.)

12. *Q.* How can Additional or Joint Sessions Judges and Assistant Sessions Judges be appointed? and to what do their powers severally extend? and to what limitation are the powers of Assistant Sessions Judges subject?

A. By the Local Government. Additional or Joint Sessions Judges shall exercise all the powers of a Court of Session in one or more sessions divisions in which they are directed to act, but can try such cases only as the Local Government directs them to try, or as the Session Judge of the division makes over to them for trial. Assistant Sessions Judges cannot hear appeals, or pass sentence of death or transportation, or imprisonment for more than seven years. Any sentence of more than three years' imprisonment passed by them is subject to the confirmation of the Session Judge.

13. *Q.* (*a*) What are the powers of a Session Judge with reference to sentences sent to him for confirmation? (*b*) and is there any appeal from the sentence of an Assistant Judge confirmed by the Session Judge? (*c*) And to whom does an appeal lie from the sentence of an Assistant Sessions Judge, when such sentence does not exceed three years' imprisonment?

A. (*a*) The Session Judge may either *confirm*, *modify*, or *annul* such sentence. (*b*) Yes, to the High Court. (*c*) To the Session Judge. (Sections 18 and 270, Act X. 1872.)

14. *Q.* What are the powers of a Magistrate of the 1st, 2nd, and 3rd class respectively? And can *any* magistrate *combine* any of the sentences he is authorized to pass?

A. Section 20, Act X. of 1872, for the powers of magistrates. Yes, *any* magistrate may pass *any lawful sentence*, combining any of the sentences he is authorized by law to pass.

15. *Q.* Can a magistrate award imprisonment in default of payment of fine *in addition to* the *full term* of imprisonment which he is competent to award? What is the meaning of the term *imprisonment?*

A. Yes. (Section 20, Act X. of 1872, explanation.) "Imprisonment" means rigorous or simple imprisonment. (Section 2, Act I. of 1868, clause 18.)

16. *Q.* What powers are inherent in each class of magistrates? And what are the powers which may be conferred on magistrates by the Local Governments, and the magistrate of the district respectively?

A. Sections 22 to 29, Act X. of 1872.

17. *Q.* When may irregular commitments be validated? And what irregularities render the proceedings void?

A. Sections 33 and 34, Act X. of 1872.

18. *Q.* With what powers may Local Governments invest deputy commissioners and chief executive of districts in what are termed "Non-regulation" Provinces?

A. Section 36, Act X. 1872.

19. *Q.* (*a*) Can a Deputy Commissioner vested with powers under section 36, Act X. of 1872, exercise these powers in the case of a person convicted at one trial for two or more offences, so as to pass a sentence exceeding imprisonment for seven years? (*b*) Further, can a Deputy Commissioner exercise

these enhanced powers when passing sentence on a case referred to him by a subordinate magistrate under section 46, Act X. of 1872? Give the reason for your answer.

A. (*a*) No; because a magistrate *other than* a magistrate acting under section 36, Act X. of 1872, is limited to twice the extent of punishment which he is by his *ordinary jurisdiction* competent to inflict. (Section 314, Act X. 1872.) (*b*) No; because the magistrate to whom the proceedings are submitted under section 46, Act X. of 1872, shall not exceed the powers *ordinarily* exercisable by him under section 20, Act X. of 1872.

20. *Q.* State how and when a magistrate of the district can transfer a case to a subordinate magistrate; and how the subordinate magistrate is to deal with such case.

A. Section 44, Act X. 1872.

21. *Q.* How is a magistrate to act when he finds that the case before him is beyond his jurisdiction? Also in a case when he finds that he cannot pass sentence sufficiently severe?

A. Sections 45, 46, Act X. of 1872.

22. *Q.* By section 47, Act X. of 1872, magistrates of districts, and of divisions of districts, may respectively withdraw or refer cases from or to their subordinate magistrates; can they do so as to certain "classes" of cases as well as a particular case?

A. Not *suo motu*, but the Local Government can authorize the magistrate of the district to do so. (Section 48, Act X. of 1872.)

23. *Q.* (*a*) What power has the magistrate of the district as to the distribution of criminal work amongst his subordinates? (*b*) And what powers has he as to framing rules for the guidance of magistrates' benches?

A. (*a*) The magistrate of the district may distribute the business of his district locally by giving to specified magistrates the power to entertain complaints in certain areas. This power, however, is to be exersised under the general or special orders of the Local Government. (Section 49, Act X. 1872.)

(*b*) Sections 52 and 53, Act X. of 1872. By the provisions of

these sections the magistrate of the district is practically a kind of Chief Justice over the magisterial courts of his district.

24. *Q.* With whom does the appointment of a public prosecutor lie? Can a public prosecutor be appointed generally, or only in a particular case or class of cases?

A. The Local Government. Either for a particular case, or particular classes of cases, or generally. (Sections 57 and 58, Act X. 1872.)

25. *Q.* Can a complainant of right prosecute a case himself, either before the magistrate or the Court of Session?

A. No. He can only do so by the permission of the Court in the Magistrate's Court, and trials before the Court of Session *must be* conducted by the Public Prosecutor, Government Pleader, or some other officer specially empowered by the magistrate of the district in that behalf. (Sections 59 and 235, Act X. 1872.)

26. *Q.* What is the effect of the withdrawal of a charge by the public prosecutor? and what are his powers as to withdrawing charges in trials before Courts of Session?

A. If the withdrawal is made whilst the case is under inquiry, the accused shall be discharged. If when he is under trial he shall be acquitted, the consent of the Court is necessary before a charge can be withdrawn. (Section 61, Act X. 1872.) In trials before Courts of Sessions, where more charges than one are preferred against the same person, and where a conviction has been had on one or more of them, the Government Pleader, or other officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges. (Section 459, Act X. 1872.)

27. *Q.* Give a brief sketch of the law of venue, as laid down by the provisions of the Code of Criminal Procedure.

A. Two considerations only affect the question of the place of trial,—the convenience of the accused and the payment of the expenses by the county. (Stephen's Crimnal Law of England, p. 189.) Every offence shall be inquired into, and, if tried by a magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session, it shall be tried by that Court of Session to which the magistrate convicts. The Local Government can direct that any cases, or class of cases, committed in any district may be tried in any Sessions division. (Section 63, Act X. 1872.)

The High Court may transfer any case or appeal, or class of cases or appeals, or direct trial in district other than that in which the offence was committed. (Section 64, *id.*) A clear case must be made out for the transfer of a case; such as inconvenience to those concerned, or likelihood of injustice. (H. C. Ruling.)

The accused is triable in the district where the act is done, or *where the consequence ensues; e.g.*, A is wounded in district X, and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z. (Section 65, and illustrations.)

When an act is an offence by reason of relation to another offence, the place for trial, is either the district in which it happened, or in the district in which the offence with which it was so connected happened.

When it is uncertain in which of several districts an offence was committed, or where committed partly in one and partly in another; or where the offence is a continuing one; or where it consists of several acts done in different districts,—it may be tried and inquired into in any one of such districts.

The offence of murder as a Thug, Dacoity, or Dacoity with murder, can be tried where the accused happens to be arrested, or in any other district in which he might be tried under any other provision of the Code, or any law relating to the trial for such offence.

In case of doubt, the High Court to decide where the inquiry shall take place. (Sections 66 to 68, Act X. 1872.)

28. *Q.* What is the effect that follows from holding the trial in a wrong place?

A. Unless actual injustice results from holding the trial in a wrong place, that is, that the accused was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, the order is not liable to be set aside. In the event of injustice resulting in either of the instances above mentioned, a new trial may be ordered. (Section 70, Act X. 1872.)

29. *Q.* (*a*) Define European British subject. (*b*) Who may inquire into and try offences committed by E. B. S? and state why this privilege was granted.

A. (*a*) Section 71, Act X. 1872; (*b*) section 72, Act X. 1872. Because the privilege is the privilege of the prisoner, not the privilege of the judge; so by the provisions of section 72 it has been provided that only an E.B.S. can inquire into or try an E.B.S.

30. *Q* Who are competent *to inquire into complaints* against an E. B. S.? and what is the extent of

such officer's jurisdiction? When must commitment be made to Session Court and when to High Court?

A. Sections 74 and 75, Act X. 1872.

31. *Q.* (*a*) Under the Code of Criminal Procedure, what order, equivalent to a writ, can be issued in respect of E. B. S. throughout the whole of India? and what only in the Presidency towns? (*b*) How is the personal liberty protected in the Mofussil?

A. (*a*) An order equivalent to a *habeas corpus ad subjiciendum* may be issued in respect of an E.B.S. throughout the whole of India. The writ of *habeas corpus* itself, mainprize, *de homine replegiando*, in the Presidency towns only,—nowhere else. (*b*) A person subjected to wrongful restraint can always procure his release by getting a petition presented to a magistrate for a summons or warrant against the person who wrongfully retains him, and by procuring himself to be summoned as a witness, wrongful restraint being an offence against the Penal Code.

32. *Q.* (*a*) What is the procedure to be followed on the claim of an E. B. S. to be dealt with as such? (*b*) and does a failure to plead his status before the magistrate amount to a waiver of a privilege? (*c*) What is the effect of a person not an E. B. S., not objecting, being dealt with as an E. B. S.?

A. (*a*) Section 83, Act X. 1872. Where there is room to believe that the accused is an E.B.S., he must be allowed an opportunity of pleading that he is one. (5 W. R. 53.) The mere plea or allegation of the accused that he is an E.B.S. is not in itself sufficient to oust the magistrate's jurisdiction, if the magistrate has cause to disbelieve such statement. If the magistrate knows for certain that the accused is an E.B.S., he cannot deal with the case, except as a justice of the peace, whether the prisoner claims or does not claim to be dealt with as such.

(*b*) Yes. (*c*) The proceedings are valid. (Sections 84 and 85, Act X. 1872.)

33. *Q.* Enumerate some of the offences under the Penal Code of which the public are in duty bound to give information to the police or the magistrate.

A. Sections 121, 121A, 122 to 126, 130, 302 to 304, 382, 392 to

399, 402, 435, 436, 449, 450, 456 to 460. (Section 89, Act X. 1872.)

34. *Q.* What matters are owners and occupiers of land, or their agents, bound to report to the magistrate or the police?

A. The residence of any notorious receiver or vendor of stolen property in any of their villages.

The resort to any place within the limits of their village of any person or persons known or reasonably suspected of being a thug or robber.

The intention to commit, or commission, of suttee or other non-bailable offence at or near such village. (Section 90, Act X. 1872.)

35. *Q.* In what cases are *all persons bound* to assist the magistrate and police? and how is intentional omission to give such assistance punishable?

A. Whenever such officer demands their aid in the prevention of a breach of the peace;

Or in the suppression of a riot or an affray;

Or in the taking of any other person whom such magistrate or police officer is authorized to arrest.

Intentional omission to give assistance is punishable under section 187, I.P.C.

36. *Q.* (*a*) Enumerate some of the instances in which a police officer may, without orders from a magistrate, and without a warrant, arrest an offender. (*b*) Can a police officer under any circumstances make an inquiry into an offence other than the offence for which he is empowered to arrest without a warrant?

A. (*a*) Section 92, Act X. 1872, and sections 94 to 97.

(*b*) Yes; any person known to have committed, or suspected of having committed, *an offence for which a police officer is not authorized to arrest without a warrant, and who refuses, on demand of a police officer, to give his name and residence, or gives a name or residence believed to be false.* (Section 93, *id.*)

37. *Q.* What is the procedure to be observed by the police as to taking arrested parties before the magistrate? and what is the procedure to be followed when a police officer deputes a subordinate to arrest without a warrant?

A. He must send up the parties, or take them up, without *unnecessary delay*. He must deliver to the subordinate an order in writing, specifying (1) the person to be arrested, and (2) the offence for which the arrest is to be made. (Sections 101, 102, Act X. 1872.)

38. *Q.* What is the law as to arrests by private persons?

A. Any private person may arrest any person *who, in his view*, commits a non-bailable and cognizable offence, and forthwith make him over to a police officer. (Sections 105 and 107, Act X. 1872.)

39. *Q.* On a complaint being made to a police officer at the police station, how is he to act?

A. He must reduce it into writing, and enter the substance of it in a book kept for that purpose. If the offence is a non-cognizable one, he shall enter the substance of it in his diary, and refer the complainant to the magistrate; if it is an offence cognizable by him, he shall inform the magistrate, and, either personally or by a subordinate, investigate the case. It does not follow that because a P.O. *may* arrest, he *must* do so; in all cases the necessity of arresting will depend on the nature of the case, whether it be trivial or heinous. (Sections 112, 113, 114, and 117, Act X. 1872.)

40. *Q.* How can the police summon and examine witnesses? And can statements so recorded be used as evidence?

A. By an order in writing. The examination is to be oral. Notes made by a P.O. cannot be taken into consideration as evidence, unless verified by the deposition in court of the officer making them. (Sections 118 and 119, Act X. 1872.)

41. *Q.* How long may the police detain the accused in custody? and how are they to act if the investigation has not been completed within that time? and how is a police officer to proceed in case of deficient evidence?

A. Not longer than twenty-four hours, *exclusive* of the time necessary for the journey from the place of arrest to the magistrate's court. If the investigation has not been completed, the accused must be forwarded to the magistrate, with a statement of his offence. In case of deficient evidence, the accused shall be released on bail or his own recognizance to appear when required, and a report of the case be submitted for the orders of the magistrate. (Secs. 124, 125, Act X. 1872.)

42. *Q.* What record is required to be kept by a police officer making an investigation? What is it to contain? What use can the magistrate make of such record? and is the prisoner or his agent entitled to see such record?

A. A diary, which must contain (1) the time at which the complaint or information reached him; (2) the time at which he daily began and closed his investigation; (3) the place or places visited by him; and (4) a statement of the circumstances ascertained by him. The magistrate may see such diary to aid him in such inquiry or trial. The prisoner or his agent is not entitled to call for or see this diary unless (1) used by the police officer to refresh his memory; or (2) used by the Court for the purpose of contradicting the police officer. (Section 126, Act X. 1872.)

43. *Q.* What are the duties of policemen under the Code in reference to unnatural or sudden deaths?

A. To inform the nearest magistrate, proceed to the spot where the body is, and in the presence of at least two respectable inhabitants of the place or neighbourhood, make an investigation, and report fully; the report to be signed by the police-officer and other persons, or so many of them as concur therein, and forwarded to the magistrate of the district, or division of a district. If there is any doubt regarding cause of death, the body to be forwarded to the Civil Surgeon, if this can be done without risk of putrefaction on the road. (Section 133, Act X. 1872.)

44. *Q.* What are the processes to compel appearance before a magistrate of persons suspected or accused of offences? When may one or the other be issued? and under what circumstances is no complaint or process necessary?

A. Summons or warrant. (1) Upon report by the police under Chapter X.; (2) upon information or report by a police officer as to a non-cognizable offence; (3) upon a complaint by a private person; (4) upon suspicion entertained by a magistrate that an offence has been committed. If the person complained of is already in custody, no complaint, summons, or warant is necessary. (Sections 139, 140, Act X. 1872.)

45. *Q.* Is it necessary that a complaint be made by the injured party? and can a magistrate issue a warrant on an anonymous communication?

A. No. A person acquainted with the facts of the case may make

a complaint. Yes; if such communication arouses his suspicions. (Sections 139 and 140, clauses c and d.)

46. *Q.* Who may entertain complaints? Who act without complaint? and under what circumstances? And who may commit for trial?

A. Sections 141 to 143, Act X. 1872.

47. *Q.* How is the magistrate to proceed on a complaint being made to him, before he issues a summons or warrant? Is he bound to issue his process, even if he have reason to disbelieve the complaint? When can he dismiss the complaint at once? and does such dismissal bar subsequent proceedings?

A. He must examine the complainant and write briefly the substance of such examination, and such examination shall be signed by the complainant, and by the magistrate. No; if he has cause to distrust the truth of the complaint, he may direct a previous inquiry by a subordinate magistrate, or the police, or in any other way he thinks fit. After examining the complainant, if he thinks there is no sufficient reason for proceeding, the magistrate can dismiss the complaint. Such dismissal does not prevent subsequent proceedings. (Sections 144, 146, and 147, Act X. 1872.)

48. *Q.* When is a summons to be first issued, and when a warrant? Under what circumstances can a magistrate dispense with the personal attendance of the accused?

A. Summons.—When the offence is punishable with fine only, or with imprisonment not exceeding six months, or both. Warrant.—When a person has committed, or is suspected of having committed, any offence punishable with imprisonment for a period exceeding six months, or an offence triable exclusively by the Court of Session, or which the magistrate thinks ought to be tried by the Court of Session. In such cases a warrant *may* be issued; but this is optional—the magistrate, if he thinks fit, need only issue a summons. In cases, of whatever nature, where the magistrate thinks fit to issue a summons, he may dispense with the personal attendance of the accused, and permit him to appear by agent. (Sections 148—151, Act X. 1872.)

49. *Q.* What is the summons to contain? and by whom and how is it to be served?

A. The summons must be in writing. It must be signed and

sealed by the magistrate, and must contain full particulars as to time, place, and person, and must inform the person summoned of what particular act he is accused, and must clearly specify the offence with which he is accused. It shall ordinarily be served through a police officer; but the magistrate, if he sees fit, may direct it to be served by *any* other person. It shall be served on the accused personally. If the accused cannot be found, a copy may be left with some adult male member of his family residing with him; if this cannot be done, the serving officer must fix a copy on some conspicuous part of the house at which the accused ordinarily resides. (Sections 152—155, Act X. 1872.)

50. *Q.* To whom may a warrant be directed? and how long does a warrant of arrest remain in force?

A. Ordinarily to a police officer; but if immediate execution is necessary, and no police officer immediately available, the magistrate may direct the warrant to any other person. In some cases, such as arrest of an escaped convict, proclaimed offender, or person accused of a non-bailable offence, who has eluded pursuit, the magistrate of the district may direct his warrant to landholders, farmers, or managers of land. The warrant remains in force until the person arrested is brought before the magistrate, and so long as he remains before the magistrate. (Sections 159, 161, and 162, Act X. 1872.)

51. *Q.* (*a*) If the accused absconds so that warrant cannot be served on him, and he cannot be found, how is the magistrate to act? (*b*) Is a proclamation to issue *whenever* a warrant fails of its effect?

A. (1) If the magistrate thinks, after taking evidence or not, that the accused absconds or conceals himself to avoid the service of warrant, he shall issue a proclamation requiring him to appear within a fixed period, not exceeding thirty days, to answer the complaint. The proclamation must be publicly read, and fixed in a conspicuous place in the town or village where accused usually resides, or be fixed in some conspicuous part of his ordinary place of abode. A copy of the proclamation must also be affixed in some conspicuous part of the magistrate's Court-house. (*b*) No; the officer sent to serve the warrant should be examined as to the measures adopted by him to serve it, and if, on his evidence, or in any other manner, the magistrate is satisfied that the accused is evading justice, then, and then only, is the process to issue. It is optional with the magistrate to take any evidence on this point, but he must have some good reason for thinking that the accused is evading justice before he issues his proclamation. The magistrate can also order the attachment of the absconder's movable or immovable property, or both. (Sections 171 and 172, Act X. 1872.)

52. *Q.* Under what circumstances can the attached property be restored to the owner?

A. If the absent person does not appear within the time specified in the proclamation, the property under attachment is at the disposal of Government. If the owner appears, or is found, within two years after attachment, and proves that he did not abscond or conceal himself to evade justice, such property, or, if sold, the proceeds thereof, shall be restored to the owner. (Sec. 173, Act X. 1872.)

53. *Q.* What is the right of the accused to be defended?

A. A person charged before any criminal court with an offence may of right be defended by a barrister or attorney of a high court, or any pleader duly qualified; but he can only with the permission of the Court employ any one else to assist him in his defence. (Section 186, Act X. 1872.)

54. *Q.* What is the law as to compounding offences?

A. In the case of offences which may lawfully be compounded, injured persons may compound the offence out of court or in court, with the permission of the Court. Such withdrawal has the effect of an acquittal of the accused. The element of a defined intention as a necessary part of an offence, and the right to bring a civil action, are the tests by which a compoundable or non-compoundable offence is to be distinguished. (Section 188, Act X. 1872; J. C. O. 84.)

55. *Q.* State briefly the procedure to be adopted in inquiries before magistrates in Sessions cases?

A. The complainant and witnesses for the prosecution must be examined in the presence of the accused or his agent, who may examine and re-examine his own witnesses, and cross-examine the complainant's witnesses. The magistrate may at any time during the inquiry examine the accused. The magistrate may, for any reasonable cause, by written order adjourn the inquiry, and remand the accused for a term not exceeding fifteen days, releasing him upon his own recognizance, with or without sureties. If there be no sufficient grounds for committing or remanding the accused, the magistrate must discharge him. Such an order cannot be made until the witnesses for the prosecution have been examined, and does not bar the revival of a prosecution for the same offence. When a *primâ facie* case is made out against the accused, and the magistrate is of opinion that there is sufficient ground for putting the accused on his trial, he must make a commitment. The magistrate can commit a person who appears before him by agent. When several persons are charged with different offences arising out of one act or transaction,

one or more of which are beyond the cognizance of the magistrate, and the rest within his cognizance, he must commit the whole of them. After the evidence has been recorded, if the magistrate determines to commit the accused, he must make a written instrument, that is, a charge, under his hand and seal, declaring with what offence the accused is charged, and record his reasons for committing the accused. (Chap. xv. Act X. 1872 ; C. H. C. March 21st, 1865.)

56. *Q.* Give the law as to the examination of the accused by the police and the magistrate ?

A. Under the present Code the accused comes in for the following examinations :—First, under section 122, where a case is under police investigation, or when a statement or confession is made to a magistrate other than the magistrate holding the inquiry, the procedure for which is laid down in sections 345 and 346. Then comes the examination referred to in section 193, which is while the inquiry is going on, and by the magistrate holding such inquiry. The principle is, that the suspected party ought to have every opportunity of clearing himself, and he may perhaps be able to explain away facts which tell against him. Again, in trial by the Court of Session, the Court may from time to time, at any stage of the trial, examine the accused. (Sec. 250, Act X. 1872.)

57. *Q.* Under what circumstances, and in what cases, can compensation be awarded to the accused? and how can such compensation be recovered ?

A. In a summons case, when the magistrate dismisses the complaint as frivolous or vexatious. The sum awarded is recoverable by the distress and sale of the complainant's movable property. (Section 209, Act X. 1872.)

58. *Q.* Is there any difference in the law as to the limit of an adjournment in summons cases and warrant cases ?

A. Yes ; the adjournment in summons cases has no limit fixed to it by law like an adjournment in the trial of warrant cases (section 214) or inquiries (section 194). (Section 208, Act X. 1872.)

59. *Q.* What offences may be tried summarily under chapter xviii. ? and by whom can such offences be tried ?

A. Offences referred to in sections 148, 264 to 266, 323, 379 to 381, where the value of the property stolen does not exceed

50 rupees, 411, 427, 448, 505 and 506, Indian Penal Code. Abetment, or attempt to commit (when such an attempt is an offence) any of the foregoing offences.

The power to hold summary trials is made inherent in the magistrate of the district; but the Local Government is empowered to invest first-class magistrates or benches of magistrates with all or any of the powers mentioned in chapter xviii.

60. *Q.* What is the chief feature of the summary trial? and does any appeal lie from sentence passed in such trials?

A. The chief feature is, that instead of the usual record of the proceedings, there will be a mere register in non-appealable cases, and a curtailed record of the evidence in appealable cases. In summary trials held by magistrates of the first class, or benches of magistrates exercising first-class powers, there will be an appeal from a sentence of more than three months' imprisonment or fine exceeding 200 rupees. (Sections 226, 227, and 274, Act X. 1872.)

61. *Q.* In appealable and non-appealable cases under chapter xviii. (of Summary Trials), what particulars is the record to consist of? and what language is the judgment to be recorded in?

A. In non-appealable cases: (*a*) the serial number; (*b*) the date of the commission of the offence; (*c*) the date of the report or complaint; (*d*) the name of the complainant; (*e*) name, parentage, and residence of the accused; (*f*) the offence complained of or proved; (*g*) the prisoner's plea; (*h*) the finding, and, in case of conviction, a brief statement of the reasons therefor; (*i*) the sentence; (*j*) the date on which the proceedings terminated.

In appealable cases, besides the above particulars, a judgment embodying the substance of the evidence on which conviction was had. The judgment shall be written by the presiding officer (and, under certain circumstances, by a clerk, if so authorized by the Local Government), either in English, or in the language of the district in which the trial was held, or in the language of the presiding officer, if the Supreme Court so direct. (Sections 227 to 230, Act X. 1872.)

62. *Q.* How are trials before Courts of Session to be conducted?

A. Either by jury, or with the aid of two or more assessors. (Section 232, Act X. 1872.)

63. *Q.* (*a*) Define the duty of the judge and the duty of the jury respectively. (*b*) The question is whether a person entertained a reasonable

belief on a particular point,—whether work was done with reasonable skill or due diligence; are these questions for the judge or the jury to decide?

A. (*a*) *Duty of judge:*—To decide all questions of law ("*ad quæstionem legis non respondent juratores*"); to decide the admissibility of evidence, the meaning and construction of documents given in evidence at the trial; to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given; to decide whether any question that arises is for himself or for the jury: here his decision is final. In summing up, he may express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Duty of the jury:—To decide which view of the facts is true; to determine the meaning of technical terms and words used in an unusual sense; to decide questions of fact; to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law.

(*b*) Each of these is a question for the jury. (Sections 256, 257, Act X. 1872.)

64. *Q.* Can a Court of Session take cognizance of any offence as a Court of original criminal jurisdiction?

A. Yes; the Court of Session has such power in offences *committed before itself*, but not otherwise. (Sections 231 and 472, Act X. 1872.)

65. *Q.* State briefly the procedure to be followed by the Court of Session in trials before itself.

A. The prosecution must be conducted by the Public Prosecutor, Government Pleader, or some one specially empowered by the magistrate of the district. When the Court is ready to commence the trial, the accused shall be brought before it, the charge read and explained to him, and he be called on to plead. If accused plead "*guilty*," his plea shall be recorded, and he may be convicted thereon. Neither the verdict of the jury nor of assessors is necessary when the prisoner pleads guilty. When the accused refuses to plead, or pleads "*not guilty*," the Court proceeds to choose the jurors or assessors, as the case may be. The former are chosen by lot from the persons summoned to act as jurors, the latter are chosen by the judge from the persons summoned to act as assessors. When this has been done, the witnesses are examined, cross-examined, and re-examined, according to the law for the time being. The examination of the

accused before the magistrate must be given in as evidence. This examination, therefore, should be detached from the magistrate's record, and attached to the record of the Session Judge, as only what appears on the Session Judge's record is evidence in such record. The depositions given before the committing magistrate may be referred to and used by the Court. The charge, the examination of the accused above alluded to, the examination of the medical witness, and the report of the chemical examiner, must all be filed on the record of the session trial; similarly, all exhibits put forward by either side should be initialled by the Session Judge, and filed on his record. The Session Judge may from time to time, at any stage of the trial, examine the accused, and question him generally on the case after the witnesses for the prosecution have been examined, and before calling on him for his defence. Then comes the defence, and the examination of any witnesses produced for the defence. If evidence is adduced on behalf of the accused, the prosecutor has a right of reply. The Court may postpone the hearing of the case, and from time to time adjourn the trial. In cases tried by assessors, their opinion must be given orally, and recorded in writing by the Court; but the decision is vested with the judge. In cases tried by jury, if the Court agrees with the verdict of the majority, it shall give judgment accordingly; if the Court disagrees with the verdict of the jury, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and either remand the prisoner to custody, or admit him to bail. (Chapter xix. Act X. of 1872.)

66. *Q.* State the grounds on which an objection may be taken to a juror.

A. That he is a person holding office under the Court, or executing police duties, or has been convicted of an offence which renders him unfit to serve on a jury; a person afflicted with any infirmity of body or mind sufficient to incapacitate him; a person who by religious vows or habit has relinquished the care of worldly affairs; that such person stands in the relation of husband, master or servant, landlord or tenant, to either prosecutor or accused; being in the employment of any such person; being plaintiff or defendant against any such person in any civil suit; having complained against or having been accused by any such person in a criminal prosecution; and any circumstances which the Court thinks renders such person improper as a juror. (Sections 244 and 405, Act X. 1872.)

67. *Q.* Instance the case where there is an appeal allowed from an acquittal, and to whom is such power limited?

A. The Local Government may direct an appeal from an original or appellate judgment of acquittal. This power is not given to a

private prosecutor, but is limited to the Local Government. (Section 272, Act X. 1872.)

68. *Q.* Detail the cases in which no appeal lies.

A. Against an order refusing to grant compensation, or to grant an enhanced award; or an order of a competent magistrate dismissing the complaint; or an order requiring the person to furnish security to keep the peace, or to be of good behaviour, when passed by the magistrate of the district; or an order passed under chapter xxxix. (Local Nuisances); nor against a report by a jury under that chapter; or an order of maintenance; or an order placing a name on the jury-list; or an order by a Court of Session fining a juror or an assessor for non-attendance; or against the order of a competent court refusing to order a commitment; or an interlocutory order, such as a claim to appear by agent; or in cases in which an officer not lower than a magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or fine not exceeding fifty rupees only, or whipping only; or from a sentence of imprisonment by such officer in default of payment of fine, when no substantive sentence of imprisonment has been passed; where an accused has been convicted on his own plea; nor in any case where it is not expressly provided for (sections 286, 273, Act X. 1872); or in summary convictions of imprisonment not exceeding three months only, or fine not exceeding 200 rupees only, or of whipping only (274, *id.*)

69. *Q.* Under what circumstances, and with what procedure can security be taken for keeping the peace?

A. Whenever a person is accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men, or taking other unlawful measures with the intention of committing the same, is convicted of such offence, and the Court convicting him think that it is necessary to take security to keep the peace, security can be taken. The procedure is,—on receipt of information of the likelihood of a breach of the peace, a summons must issue to show cause why the accused should not be bound over to keep the peace; the summons to set forth the substance of the information, and the time and place at which the person summoned is required to attend. In default of attendance, a warrant of arrest may issue. The magistrate may, if he sees so fit, allow the accused to attend by agent. No officer below the grade of a magistrate of the first class can issue orders in such cases. (Chapter xxxvii. Act X. 1872.)

70. *Q.* When an offender is sentenced to pay a fine, how is the fine levied? and to what extent can any

part of it be applied to compensation for injury done?

A. By warrant; by distress and sale of the offender's movable property. Compensation may be given, (1) for expenses properly incurred in the prosecution; (2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money. (Sections 307, 308, Act X. 1872.)

71. *Q.* In what way are Indian Criminal Courts empowered to deal with contempt of court?

A. Chapter xxxii. provides a summary procedure for contempts of court. The contempts therein referred to are all actual contempts. For such contempts as are therein referred to, committed *in the view or presence of any* Civil, Criminal, or Revenue Court, the Court may detain the offender in custody, and take cognizance of such offence before the rising of the Court on *the same day*, and adjudge the offender to fine not over 200 rupees, and, *in default of payment*, by imprisonment in the civil jail not exceeding one month. If the Court consider that the accused should be imprisoned, or fined more than 200 rupees, it can, after recording the facts and accused's statement, forward the case to a magistrate if the accused is a native, *and* to a J. P. if he is a European British Subject, releasing the accused on bail. The offender may be discharged on submission to the Court's order, or on making an apology. (Sections 435 to 437, Act X. 1872.)

72. *Q.* What is the rule to be followed when imprisonment is awarded in default of payment of fine?

A. The period of imprisonment awarded in default must not exceed one-fourth of the period of imprisonment which such magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in defanlt of payment of fine; *e.g.*, in the case of persons convicted of being members of an unlawful assembly, a subordinate magistrate of the first class cannot under this section award any greater sentence of imprisonment in default of payment of fine than six weeks. (Section 309, Act X. 1872.)

73. *Q.* What orders and papers is a party desirous of appealing entitled to? And how is he to present his petition of appeal if he be in jail?

A. A copy of the judgment or other order passed, and, in cases tried by jury, the judge's charge. If in jail, he may present his petition to the officer in charge of the jail to forward to the proper authority. (Sections 276, 277, Act X. 1872.)

74. *Q.* What power has the Appellate Court over the finding and sentence of the lower Court?

A. It can alter or reverse, or enhance any findings, sentence, order, or punishment. (Section 280, Act X. 1872.)

75. *Q.* What power has the Appellate Court to direct further inquiry?

A. In cases where an appeal has been allowed, the Appellate Court, if it thinks further inquiry or additional evidence necessary, may make such inquiry or take such evidence itself, or direct such inquiry to be made, and additional evidence to be taken. (Section 282, Act X. 1872.)

76. *Q.* When is a finding or sentence reversible by reason of error or defect in charge or proceedings?

A. If such error or defect has occasioned a failure of justice. (Section 283, Act X. 1872.)

77. *Q.* Has the Appellate Court any power to annul, reduce, or enhance a punishment? and if so, what power?

A. In a case of conviction by a Court not having jurisdiction, the Appellate Court must annul the conviction and sentence. If the accused has been sentenced to a larger amount of punishment than could have been awarded for the offence which the Appellate Court thinks is proved by the evidence, it may reduce the punishment. The Appellate Court has the power of enhancing any punishment. (*See* answer to question 74, *ante*, and sections 283 and 284, Act X. 1872.)

78. *Q.* What is the general power of reference exercised by the High Court?

A. Sentence of death must be referred for confirmation to the High Court. The power of the High Court to confirm such sentence, or annul such conviction, is the same in cases tried by jury as in cases tried by assessors. The High Court can direct further inquiry or additional evidence to be taken. (Sections 287, 288, 289, Act X. 1872.)

79. *Q.* What are the powers of Courts of Session to call for the record of subordinate Courts?

A. They have the power to call for and examine the record of any magistrate within their district, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such magistrate. (Sec. 295, Act X. 1872.)

80. *Q.* When can the Sessions Judge or magistrate of the district forward the proceedings to the High Court?

A. When he is of opinion that the order or sentence of the subordinate Court is contrary to law, or that punishment is too severe, or inadequate. (Sec. 296, Act X. 1872.)

81. *Q.* What is the general power of revision exercised by the High Court?

A. In a case called for by itself, or reported for orders, or which comes to its knowledge, if it thinks there has been a material error in any judicial proceedings of a subordinate Court, it can pass such judgment, sentence, or order as it thinks fit. It has power to order a commitment, or to alter the finding and sentence, or to annul a conviction, and order a new trial, or to annul an improper, and to pass a proper sentence, or suspend sentence and release a person imprisoned on bail, if offence be bailable. It has the power to order an inquiry into a complaint dismissed by the magistrate under section 147. Under its powers of revision it is optional with the High Court to hear cases: no person has a right to be heard. The order on revision must be certified to the lower Court. It has the power to set aside the verdict of a jury and order a new trial, if of opinion that the jury was misdirected by the judge. (Sections 297, 298, 299, Act X. 1872.)

82. *Q.* What is the power of the High Court to make and issue general rules?

A. It has the power to make rules (1) for keeping all books, entries, and accounts in criminal courts subordinate to it; (2) for the preparation and transmission of calendars and statements to be prepared for submission by such courts; (3) it may frame forms for proceedings in the said courts; (4) it may alter any such rule or form; (5) with concurrence of the Local Government, may make and issue general rules for regulating the practice and proceedings of subordinate courts, and, with like sanction, alter any such rule. Such rules and forms must not be inconsistent with any law in force for the time being, and they must be published in the Official Gazette. (Section 292, Act X. 1872.)

83. *Q.* When is whipping awarded in addition to imprisonment by a Court, whose sentence is open to revision, to be inflicted?

A. Not until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by a superior Court. (Section 310, Act X. 1872.)

84. *Q.* In the event of the aggregate punishment inflicted on a person for distinct offences exceeding seven years' imprisonment, can he be sentenced to transportation?

A. Yes. See section 314 and para. i. 454, Act X. 1872, and section 59, P. C.

85. *Q.* What is the procedure to be followed in passing sentence in cases of simultaneous conviction of several offences, and what is the principle of this provision?

A. The Court may sentence the accused for the offences of which he has been convicted to the several penalties prescribed which such Court is competent to inflict; when consisting of imprisonment or transportation, to commence the one after the expiration of the other; it is not necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of that which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. In no case is the sentence of imprisonment to be for a longer term than fourteen years. The principle is, that where acts are connected, and form substantially part of one and the same transaction, and the evidence with reference to these acts is as material on one charge as on the other, the whole transaction must be viewed as *one* offence. (Section 314, Act X. 1872.)

86. *Q.* What is the rule to be observed as to currency of sentence passed on escaped convicts? Also as to a sentence on an offender already sentenced for another offence?

A. The sentence is to take effect immediately, or after such convict has suffered imprisonment or transportation, as the case may be, for a further period equal to that which remained unexpired of his former sentence at the time of his escape, as the Court may direct. In the latter case put in the question, the Court shall direct that such imprisonment or transportation shall commence at the expiration of the previous sentence, or, if he is undergoing imprisonment, and the subsequent sentence is for transportation, the Court may direct sentence to commence immediately, or at the expiration of the previous sentence. (Sections 316, 317, Act X. 1872.)

87. *Q.* What is the power of the Governor-General or Local Government to (1) remit punishment, and (2) to commute punishment?

A. They may at any time, without conditions, or upon any condi-

tions which the person sentenced accepts, *remit* the whole or any part of his sentence, or they may, without the consent of the person sentenced, in substitution for the sentence passed, *commute* any one of the following sentences for any other mentioned after it—death, transportation, penal servitude, imprisonment. (Section 322, Act X. 1872.)

88. *Q.* Can the Government revoke a conditional pardon once granted? If so, under what circumstances can they do so, and what is the object of this provision?

A. Yes, if the person to whom pardon is granted fails to fulfil the conditions. This is to meet the difficulty of proving in a court of justice that a man knows more than he pretends to know. (Section 322, Act X. 1872.)

89. *Q.* What is the rule as to giving in evidence in a criminal trial the evidence of, (1) a medical witness, and (2) the report of a chemical examiner?

A. The examination of a medical witness, taken and duly attested by a magistrate, and the *original* report of a chemical examiner, bearing his signature, may be put in as evidence, although the person examined is not called as a witness. (Sections 323, 325, Act X. 1872.)

90. *Q.* How are previous convictions or acquittals to be proved?

A. A certified extract of such conviction or acquittal, under the hand of the clerk of the court or other officer having custody of the record of the court in which such conviction was had, must be produced. (Section 326, Act X. 1872.) It will be as well to have a personal identification of the accused.

91. *Q.* When may evidence be recorded in the absence of the accused, and such record be used in evidence against him?

A. If the accused absconds, any competent Court may record the statements of persons acquainted with the facts of the case; and if on the arrest and trial of the accused, the attendance of these witnesses is not procurable, then such recorded statements may be put in against the accused. (Section 327, Act X. 1872.)

92. *Q.* Can a magistrate convict an accused on evidence partly recorded by another magistrate and partly by himself?

A. Yes, unless the accused demand that the witnesses be re-summoned and re-heard. (Section 328, Act X. 1872.)

93. *Q.* Can a commission be issued for the evidence of a witness in a criminal case?

A. Yes, if the attendance of the witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, a Court of Session or High Court may dispense with the attendance of such witness, and direct a commission to the magistrate of the district or magistrate of the first class. (Section 330, Act X. 1872.)

94. *Q.* What is the procedure to be followed before such commissions? and can a commission be issued in a magistrate's case as well as a sessions case?

A. The prosecutor and the accused may forward interrogatories, or may appear personally, or by agent, before the officer to whom the commission is directed. Yes; by leave of the Court of Session to whom such magistrate is subordinate. (Section 330, Act X. 1872.)

95. *Q.* In what mode and language is the evidence of witnesses and complainants in criminal proceedings to be recorded?

A. Upon oath or affirmation. In *summons* cases a memorandum of the substance, written and signed by the magistrate, is to be made as the examination proceeds. In all other cases the evidence is to be taken down in writing in the language in ordinary use in the district, by or in the presence and hearing, and under the personal direction of the presiding officer, and shall be signed by him, and a memorandum of the substance of such depositions shall be written and signed by the presiding officer himself. If prevented from making such a memorandum, he shall record the reason of his inability to do so. The Local Government can direct evidence to be recorded by the magistrate himself, in his vernacular, or in English, or in the language in ordinary use in the district. (Sections 331–336, Act X. 1872.)

96. *Q.* How is the evidence to be recorded?

A. In the form of a narrative. It is in the discretion of the presiding officer to take down, or cause to be taken down, any particular question and answer. (Section 338, Act X. 1872.)

97. *Q.* How is the accused to be examined? and how is his examination to be recorded?

A. From time to time, and at any stage of the proceedings, the Court may put questions to the accused. The whole of his examination, including every question put, and every answer given, must be recorded in full, and shown or read to the accused, who is at liberty to explain or add to his answers. When completed, the

examination must be tested by the signature of the presiding officer, who must certify that it was taken in his presence and hearing, and contains accurately the whole of accused's statement. (Sections 342 and 346, Act X. 1872.)

98. *Q.* What is the material difference between the *examination* of the accused and the *defence* of the accused?

A. By section 346 the whole of accused's examination, including every question put and answer given, must be recorded in full. Further, the examination of the accused may take place at different times, and at any stage of the proceedings. This examination must be given in evidence at the session trial, and form part of the Session Judge's record. The object of an examination is not to elicit the *defence* which the accused may wish to make, but to obtain his version of the facts as spoken to by the witnesses against him. The accused's *defence*, if he sets up a defence, comes off at the close of the session trial. (Sections 342, 346, and 251, Act X. 1872.)

99. *Q.* What is the law as to tendering a pardon to an accused party?

A. The magistrate of a district, any magistrate of the first class, or, with the sanction of the magistrate of the district, any magistrate duly empowered to commit to the Court of Session, may, after recording his reason, tender a pardon to any one or more persons accused of an offence triable exclusively by the Court of Session, on condition of his, or their, making a full, true, and fair disclosure of all circumstances relating to the crime and those concerned in it. The High Court, or Court of Session, may direct tender of pardon after committal, but before commencement of trial. (Sections 347 and 348, Act X. 1872.)

100. *Q.* What is the procedure (1) for obtaining the attendance of witnesses, and (2) the procedure when a witness absconds or conceals himself?

A. (1) By summons or warrant. (2) If witness abscond, the Court may issue a proclamation for his attendance at a given time and place, and if he does not attend, the Court may order attachment of his movables. (Section 353, Act X. 1872.)

101. *Q.* If a witness appears but refuses to answer questions put to him, what power has the magistrate and the Court of Session respectively? and if he still persists in refusing to answer, how may the magistrate proceed?

A. (1) Magistrate may by warrant, under his hand and seal, commit him to custody for a week, unless in the meantime he

consents to answer. (2) The Court of Session may commit him to custody for such reasonable time as it deems proper; in the event of such witness persisting in his refusal, the magistrate, or Court of Session, may punish him for contempt of court. (Sections 356, 364, 435, 436, Act X. 1872.)

102. *Q.* What is the procedure for obtaining production of documents required as evidence? and has the Court any power to impound such documents?

A. The Court may issue a summons to the party who has the document, requiring him to attend and produce it. If a summons is not sufficient, a warrant may be issued. Yes; a Court may, if it think fit, impound any document produced before it. (Sections 365, 366, 367, Act X. 1872.)

103. *Q.* (1) When is a search warrant grantable? (2) and to whom must it be directed?

A. (1) When a magistrate thinks the production of anything essential to the conduct of an inquiry into an offence, or to the discovery of the offender, or when he considers that inquiry or discovery will be furthered by the search or inspection of any house or place. (2) Ordinarily directed to a police officer; but, if immediate search is necessary, and no police officer is immediately available, it may be directed to any other person. (Sections 368, 370, Act X. 1872.)

104. *Q.* Can a magistrate of one district issue a search warrant to be executed in the jurisdiction of another magistrate? If so, how is such warrant to be executed?

A. Yes. On receipt of such warrant by the magistrate to whom it is directed, he shall indorse his name thereon, and enforce its execution in the same manner as if it had been originally issued by himself. (Sections 375, 376, Act X. 1872.)

105. *Q.* What are the powers of the police as to inspection of weights and measures? And what is the procedure to be followed by the police if any place they wish to search is closed against them?

A. (1) An officer in charge of a police station may, without a warrant, enter any shop or premises within his jurisdiction for this purpose, whenever he has reason to believe that there are in such shop or premises false weights and measures. (2) He may break open any outer or inner door or window of such house or place, if he cannot otherwise obtain admittance. (Section 383, Act X. 1872.)

106. *Q.* What is the law as to searching arrested persons? and how are women to be searched?

A. The police may search persons arrested by them, and place in safe custody all articles other than necessary articles of apparel found on such persons. The search of women is to be conducted with strict regard to the habits and customs of the country. (Sections 386, 387, Act X. 1872.)

107. *Q.* When may bail be taken, and when must it be taken?

A. When a person is brought before the magistrate, accused of any bailable offence, bail *must* be taken; if of a non-bailable offence, if there is not sufficient evidence to raise a strong presumption of the accused's guilt, he *may* be admitted to bail. (Sections 388, 389, Act X. 1872.)

108. *Q.* When can a magistrate call upon an accused to give sureties? And what is the proceeding to be adopted to compel payment of penalty mentioned in the recognizance, (1) from the accused, (2) from his sureties?

A. When a magistrate admits to bail any person accused or suspected of any offence, (1) the sureties must be called upon to show cause why the amount of penalty mentioned in their recognizances should not be paid by them. If the penalty is not paid, or cause shown, the magistrate shall proceed to recover the penalty by issuing a warrant for the attachment and sale of such sureties' movables. If the penalty be not paid, and cannot be recovered, the sureties are liable to six months' imprisonment in the civil jail. (2) Warrant for the attachment and sale of the movable property belonging to such sureties. (Sections 396, 397, Act X. 1872.)

109. *Q.* Can the penalty referred to in the last preceding section be remitted? and can the orders of a magistrate on this point be revised? and are such orders appealable or not?

A. Yes. Orders passed by any magistrate, other than the magistrate of the district, are appealable to the magistrate of the district, or, if not so appealed, may be revised by him. No magistrate but the magistrate of the district can revise a bail order. (Sections 34, 398, Act X. 1872.)

110. *Q.* Can money be deposited as bail?

A. Yes, by permission of the Court, in all cases except of security for good behaviour. (Section 399, Act X. 1872.)

111. *Q.* Who are required to make out lists of jurors and assessors? and who to hear objections against names being entered in such list, and to disqualify persons from serving as jurors?

A. The Sessions Judge *and* the Collector are to make out the requisite lists; the Sessions Judge and Collector, or Sessions Judge *and* other officer, are jointly to hear objections and to disqualify persons from serving as jurors, &c. (Chapter xxix. Act X. 1872.)

112. *Q.* What provision is there for publication of such lists, and also for their revision?

A. Copies of such lists must be stuck up in the office of the collector or other officer, and in the court-house of the magistrate of the district, and of the chief civil court, and in some conspicuous place in the town near or in the vicinity of which the persons named in the lists reside. The list must be revised once every year. (Sections 401, 403, Act X. 1872.)

113. *Q.* When may a Court excuse the attendance of a juror or assessor? and to what penalty does a juror or assessor render himself liable by non-attendance?

A. For reasonable cause. He is liable to a fine not exceeding 100 rupees, to be levied by the magistrate of the district by attachment and sale of his movables. In default of recovery of fine by such attachment and sale, he may be imprisoned in the civil jail for fifteen days. (Sections 412, 414, Act X. 1872.)

114. *Q.* What is the procedure to be followed by the police upon seizure of suspected or stolen property?

A. The fact must be reported to the magistrate, who shall make such order respecting the custody as he thinks proper. If it is of a perishable nature, it may be sold, and proceeds held in trust for the owner. If the owner is unknown, the magistrate shall issue a proclamation, specifying the articles, and requiring owner to appear and establish his claim within six months. If no claimant appear within six months, the property shall be at the disposal of the Government. (Sections 415, 417, Act X. 1872.)

115. *Q.* What is the procedure to be followed in case of an accused being found of unsound mind, (1) before a magistrate, and (2) before a Court of Session?

A. The magistrate must institute an inquiry to ascertain the fact of such unsoundness of mind, and cause the accused to be examined by the Civil Surgeon, or some other medical officer, and examine such Civil Surgeon or medical officer as a witness, and reduce his examination into writing; if of opinion that the accused is of unsound mind, the magistrate shall stay further proceedings. The Court of Sessions must, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give special judgment to this effect, and postpone the trial. (Section 425, Act X. 1872.)

116. *Q.* In the case of an acquittal on the ground of accused being a lunatic, what is the Court specially to state in its finding?

A. It shall state specially whether such person committed the act or not. The prisoner cannot be found guilty of the offence charged, and then acquitted on the ground of insanity, for this would include two opposite verdicts in one and the same finding. (Section 429, Act X. 1872.)

117. *Q.* What is the procedure when a lunatic prisoner is reported capable of making his defence? and what provisions are there in the Code for the care and custody of lunatics on release or pending investigation?

A. The Court shall proceed with the inquiry, or the accused be put on his trial, as the case may require, and the certificate of the Inspector-General, or visitors, certifying that the accused is capable of making his defence, shall be receivable in evidence.

If the offence of which the person is accused be bailable, he may be released on sufficient security being given that he shall be taken care of, and prevented from doing injury to himself or others, and for his appearance when required. If un-bailable, or bail cannot be given, he shall be kept in safe custody in such place as the Local Government may direct. Persons acquitted on account of unsoundness of mind may be delivered over to the care and custody of a relative or friend, on such relative or friend giving security that the lunatic should be taken care of. (Sections 426, 428, 432, 434, Act X. 1872.)

118. *Q.* State how the subject of "The Charge" is dealt with in the Code under chapters xv., xvi., xvii., and xviii.

A. Under chap. xv., when the magistrate determines to send the accused before the Court of Sessions, or High Court, for trial, he must, after the evidence has been recorded, make a written instrument under his hand and seal; *i. e.* a charge. Under chap. xvi. no

formal charge is necessary; all that is requisite is for the magistrate to state the substance of the complaint to the accused. Under the provisions of chap. xvii. a charge in writing is essential, and under chap. xviii., in cases in which no appeal lies, the magistrate need not draw up a formal charge.

119. *Q.* What is the charge to state? and in what language is it to be written? and what particulars is it to contain? And when can a charge be amended?

A. (1) The offence with which the accused person is charged. The offence must be specifically named or defined. (2) It must be written in either English or the language of the district; if not written in a language understood by the prisoner, it must be translated to him. (3) It must contain such particulars as to time and place of the offence, and person against whom it was committed, as to let the accused know of the matter with which he is charged. (4) Upon the application of the accused, or upon its own motion, the Court may amend or alter any charge at any stage of the proceedings before judgment is signed, or, in cases of trials before a Court of Session, before the verdict of the jury is delivered, or the opinion of the assessors is expressed. (Sections 439, 440, 445, Act X. 1872.)

120. *Q.* What are immaterial errors in a charge? and what is a material error? and what is the effect of a material error in drawing up the charge?

A. (1) Errors or omissions in drawing up the charge by which the accused has not been misled; (2) an error or omission by which the accused was misled in his defence; (3) the Appellate Court, or High Court, in the exercise of its power of revision, may direct a new trial to be had upon an amended charge, if the accused was misled in his defence by an error in the charge. (Sections 443, 451, Act X. 1872.)

121. *Q.* Can an accused be charged in the alternative? if so, under what circumstances? And give an illustration.

A. Yes; A is accused of an act which may either amount to a theft, receiving stolen property, criminal breach of trust, or cheating. He can be charged with having committed either theft, or criminal breach of trust, or cheating. (Section 455, Act X. 1872.)

122. *Q.* What persons may be charged jointly? Illustrate your answer.

A. When they are accused of the same offence, or of different

offences committed in the same transaction; or where one person is accused of committing any offence and the other of abetment, or attempt of such offence; *e. g.*, A and B are accused of a robbery, in the course of which A commits a murder, with which B has nothing to do: A and B may be charged together with robbery, and A alone with murder. (Sec. 458, Act X. 1872.)

123. *Q.* Give briefly an illustration of the maxim "*Nemo debet bis vexari pro una et eadem causa*," and the law of *autrefois acquit* and *autrefois convict* under the provisions of the Code of Criminal Procedure.

A. When a man is indicted for an offence and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and if he be thus indicted a second time, he may plead *autrefois acquit*, and it will be a good bar to the indictment. The true test by which the question whether such a plea is sufficient bar, in any particular case may be tried, is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first. The proof of the issue lies on the defendant. The same rules apply generally to *autrefois convict*. (*See* Arch. 131, and section 460, Ind. Cr. Code, p. 726 to 729, and notes.)

124. *Q.* What is the judgment to specify? and when is it to be in the alternative? and what is it to contain?

A. The judgment shall distinctly specify the offence of which, and the section of the I. P. C., or other law, under which the accused is convicted. If it be doubtful under which of two sections, or parts of the same section, such offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. It must contain, (1) the point or points for determination; (2) the finding thereupon; (3) the reasons for the finding; (4) it shall be dated and signed in open court at the time of pronouncing it; (5) it shall specify the offence of which accused is convicted; (6) the sentence, or, if it be a finding of acquittal, shall direct that he be set at liberty. (Sections 461, 464, Act X. 1872.)

125. *Q.* State briefly the law regarding the dispersion of unlawful assemblies in India.

A. Chapter xxxvi. of the Code sets out in plain terms the law as to the dispersion of unlawful assemblies by military force. Any magistrate may command any unlawful assembly to disperse, and, if it disobeys, force may be used, and the assistance of troops called in.

Section 483 protects the magistrate who orders an assembly to be dispersed by military force, if he regards the measure as necessary to the public security, on reasonable grounds and in good faith. Sections 484, 485 make it the duty of the officer in command to obey the magistrate's requisition; and whilst they put upon him the responsibility, which he clearly ought to bear, of deciding on the manner in which the requisition is to be carried out, they protect him from all responsibility for the order itself. In the same spirit, section 486 protects every inferior officer and soldier for every act done in obedience to any order which he was bound to obey by the Mutiny Act or the Indian Articles of War; and when a military officer has to act in the absence of a magistrate, the clear wording of this chapter gives him a safe basis to go on. The prosecution for excess in acts done under this chapter is not permitted without the sanction of the Local Government. (Ind. Cr. Code, pp. 743 to 749.)

126. *Q.* (1) By whom must a complaint for adultery, (2) or enticing away a married woman, be laid?

A. (1) By the husband of the woman, or by any person under whose care she was living at the time when the offence was committed. (2) By the husband of the woman, or by the person having care of such woman on behalf of her husband. (Sections 478, 479, Act X. 1872.)

127. *Q.* Does an action lie against persons acting in a public character and situation, at the instance of any one who imagines himself aggrieved by the acts of such public servant?

A. No, not without the sanction or under the direction of the Local Government, or Court or authority to which such public servant is subordinate. As regards liability of such servant *ex delicto* for an act *per se* wrongful, and injurious to another, for an injury, in the strict legal sense of that term, he will be liable. (Section 465, Act X. 1872; B. C. L. 620.)

128. *Q.* What is the power of the Court of Sessions as to offences for perjury and forgery committed before itself?

A. It may charge any person for such offence before it or under its own cognizance, if the offence be triable exclusively by it, and may commit, or hold to bail, or try him upon its own charge. (Section 472, Act X. 1872.)

129. *Q.* When may a magistrate require security for good behaviour, (1) for six months? (2) and when for one year? (3) And what is he to do

when he thinks security should be taken for a longer period than one year?

A. (1) When it appears to him that any person is lurking, or is within his jurisdiction without ostensible means of subsistence, or who cannot give a satisfactory account of himself; (2) when it appears from evidence as to general character, that any person is by repute a robber, housebreaker, thief, or receiver of stolen property, or of notoriously bad livelihood or dangerous character. (3) He shall record his opinion to that effect, with an order specifying the amount of security which should be required, as well as the number, character, and class of sureties, and the period, not exceeding three years, for which the surety should be responsible; and if the order is not complied with, the magistrate shall issue a warrant directing his detention pending orders of the Court of Session. (Sections 504 to 506, Act X. 1872.)

130. *Q.* What is the order for security to contain?

A. (1) The amount of the security; (2) the number and description of sureties; and (3) the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security. (Section 509, Act X. 1872.)

131. *Q.* In default of security, how long can the offender be imprisoned? and to what kind of imprisonment is he liable?

A. He shall be committed to prison until he furnish security, provided that he shall not be kept in prison for a longer period than that for which the security had been required of him. Imprisonment may be rigorous or simple. (Section 510, Act X. 1872.)

132. *Q.* What summary powers has the magistrate for preserving the peace, and restraining persons from doing acts, preventing obstructions, and danger to human life?

A. He may, by a written order, direct any person to abstain from such act, or take certain order with such property in his possession or under his management, whenever he considers that such direction is likely to prevent obstruction, annoyance, or injury to any person lawfully employed, or danger to human life, health, or safety, or a riot, or an affray. (Section 518, Act X. 1872.)

133. *Q.* With what object have magistrates been given these summary powers? Can such an order be passed *ex parte?* and what power has the magistrate for recalling or altering his order?

A. With the object to provide magistrates with power to put an immediate determination to the continuance of acts, nuisances, &c. where speedy action is required. Yes; an order may, in cases of emergency, or in cases where the circumstances do not admit of the serving of notice, and in all cases made upon information which satisfies the magistrate, be passed *ex parte*. Yes; he can recall or alter any order made under this section by himself, or by his predecessor in the same office. (Section 518, explanations i., ii., iii., Act X. 1872.)

134. *Q.* For the removal of what particular nuisances may a magistrate make an order under section 521? When can such an order be issued? and is such order open to revision by the High Court?

A. When he considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation is injurious to the health or comfort of the community; or that the construction of any building, or the disposal of any combustible substance, is likely to occasion conflagration; or that any building is in such a state of weakness that it is likely to fall and cause injury to passers-by; or that any tank or well adjacent to any public thoroughfare should be fenced. Such order may be issued on a report or other information which the magistrate believes. The issue of such an order being a judicial proceeding, is open to revision by the High Court. (Sections 297, 521, Act X. 1872.)

135. *Q.* How is such an order (question 134) to be served on the person to whom it is issued? and how is the party receiving the order to act with regard to it? and what is the procedure to be followed in case of neglect or disobedience of such order?

A. The order shall, if practicable, be served personally on the person to whom it is issued; if this cannot be done, the order shall be notified by proclamation, and a written notice of it stuck up at such places as may be best adapted for conveying the information to such person. The person receiving such order must obey the same, or apply to the magistrate for a jury to try whether such order is reasonable and proper. In case of neglect or disobedience, the offender is liable to be punished under section 188, I.P.C., and the magistrate who issued the order can carry it into execution at the expense of such person. (Sections 522, 523, 525, Act X. 1872.)

136. *Q.* What becomes of the magistrate's order pending inquiry by the jury? and under what

circumstances can a magistrate issue an injunction pending inquiry by the jury?

A. The execution of the order shall be suspended pending inquiry. If the magistrate thinks that immediate measures are necessary to prevent imminent danger or injury of a serious kind to the public, he may issue an injunction, whether a jury is to be, or has been, appointed or not. (Sections 523 and 528, Act X. 1872.)

137. *Q.* How is the magistrate to proceed if satisfied that any dispute concerning land is likely to cause a breach of the peace?

A. He shall record a proceeding, stating the grounds of his being so satisfied, and call on all parties concerned in such dispute to attend his court in person within a fixed time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. (Section 530, Act X. 1872.)

138. *Q.* How may he satisfy himself of the existence of such dispute?

A. From a report or other information. (Section 530, explanation, Act X. 1872.)

139. *Q.* What is the point for decision in such a case? and on what evidence is such point to be decided? and what is the magistrate's order to clearly state?

A. What party is in possession of the subject of dispute. This question of possession must be decided on evidence taken before him. Documentary evidence alone, therefore, is not sufficient. His order must clearly state the party or parties entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time. (Section 530, Act X. 1872.)

140. *Q.* If previous possession cannot be ascertained, how is the magistrate to act?

A. He may attach the subject of dispute until a competent Civil Court has determined the rights of the parties, or who ought to be in possession. (Section 531, Act X. 1872.)

141. *Q.* In disputes concerning right of *use* of land or water, how is the magistrate to act?

A. He may inquire into the matter, and if he thinks that the subject of dispute is open to the use of the public, or any person or class of persons, he may order that possession thereof shall not

be taken or retained by any one exclusively until the person claiming possession shall obtain the decision of a competent Civil Court, adjudging him to be entitled to such exclusive possession. (Sec. 532, Act X. 1872.)

142. *Q.* What officers are empowered, and under what circumstances are they so empowered, to order maintenance to wives and families?

A. The magistrate of the district, or of a division of a district, or of the first class, are empowered, in cases where a person, having sufficient means, neglects or refuses to maintain his wife or child, unable to maintain themselves, on due proof thereof by evidence, to order maintenance. (Section 536, Act X. 1872.)

143. *Q.* How can an order for maintenance be enforced? and is there any appeal from such an order?

A. By warrant directing the amount to be levied in the manner provided for levying fines, and further by imprisoning such person, with or without hard labour, for a term not exceeding one month for each month's allowance remaining unpaid. No, there is no appeal from such an order. (Section 536, Act X. 1872.)

144. *Q.* Is the magistrate empowered to order maintenance to legitimate, as well as illegitimate children? and to unmarried women in a state of pregnancy, as well as to wives?

A. The law empowers a magistrate to order maintenance to children, legitimate and illegitimate, and to wives, but not to unmarried women in a state of pregnancy. (Section 536, Act X. 1872; Note Ind. Cr. Code, 785.)

145. *Q.* What is the maximum amount of allowance the magistrate is empowered to grant? and can he, under any circumstances, make an alteration in the amount of the allowance to be paid?

A. The maximum amount of allowance is not to exceed fifty rupees per mensem on the whole. On the application of any person receiving or ordered to pay a monthly allowance, and on proof of a change in the circumstances of such person, his wife, or child, the magistrate may make such alteration in the allowance ordered as he deems fit, provided the total sum of fifty rupees per mensem be not exceeded. (Sections 536, 537, Act X. 1872.)

CHAPTER IV.

ACT XLV. OF 1860, AS ALTERED AND AMENDED BY ACT IV. OF 1867, ACT XXVII. OF 1870, AND ACT XIX OF 1872.

INDIAN PENAL CODE.

1. *Q.* What is the object of the series of "General Exceptions" inserted in the Indian Penal Code?

A. The object of the "General Exceptions" is to limit or modify in certain cases the rule common to all the penal clauses of the Code, and to obviate the necessity of repeating in every penal clause a considerable number of limitations. With the exception of one or two limitations, which limitations are, as a rule, appended to the sections which they are intended to modify, there are other exceptions in favour of infants, lunatics, idiots, persons under influence of delirium; exceptions in favour of acts done by the law; acts done in self-defence; acts done by the consent of the party harmed by them. It would be inconvenient to repeat these exceptions several times in every page; hence they have been given a chapter to themselves, and it is provided that every definition of an offence, every penal provision, every illustration of a definition or penal provision, shall be construed subject to the provisions contained in this chapter.

2. *Q.* State at length those "General Exceptions" which have reference (*a*) to acts done by a Judge, and acts done in pursuance of an order or judgment of a Court of Justice; (*b*) acts likely to cause harm, but done without criminal intent; (*c*) acts done with consent. And give an illustration in each case.

A. (*a*) An act of a Judge when acting judicially, which is, or which he *bonâ fide* believes to be, lawful. Act XVIII. 1850 enacts that no civil action lies against a Judge acting judicially for anything done or ordered to be done by him in good faith. The maxim is "*De*

fide et officio Judicis non recipitur quæstio, sed de scientia, sive sit error juris sive facti." Nothing is an offence which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force. The Court having no jurisdiction, notwithstanding, if the person doing the act in good faith believed that the Court had jurisdiction; *e. g.*, persons acting beyond jnrisdiction are *not* protected by this section. The protection is *eundo, morando, et redeundo.* (5 R. J. P. J. 43; see also 3 R. C. C. Cr. 8.)

(*b*) Nothing is an offence merely by reason of its being done with such knowledge, if done in good faith for the purpose of preventing or avoiding other harm to person or property; *e.g.*, A in a great fire pulls down houses to prevent the conflagration from spreading. If the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of any offence.

(*c*) An act not intended to cause death, done by consent in good faith for the benefit of a person; the consent to suffer the harm, or take the risk, may be express or implied; *e.g.*, A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending in good faith Z's benefit, performs that operation on Z with Z's consent, A has committed no offence.

An act done in good faith for the benefit of a child, that is a person under twelve years of age, or of unsound mind, by, or by consent of, guardian or other person having lawful charge of that person, is no offence; *e. g.*, A, in good faith for his child's benefit, without his child's consent, has his child cut for stone, knowing it likely to cause death, but not intending to cause the child's death.

3. *Q.* When is (1) "accident" or "misfortune," (2) "intoxication," (3) "insanity," and (4) "consent" a good defence?

A. (1) A is at work with a hatchet, the head flies off and hits a man who is standing by; here, if there was no want of proper caution on the part of A, his act is no offence. A lawful act done in a lawful manner by lawful means, with proper caution and without criminal intention, in the doing of which an accident or misfortune occurs, such accident or misfortune is a valid plea in defence; (2) provided that the thing which intoxicated him was administered to him without his knowledge or against his will; (3) to amount to a complete bar of punishment, either at the time of committing the offence or of the trial, the insanity must have been of such a kind as entirely to deprive the prisoner of the use of reason *as applied to the act in question*, and the knowledge that he was doing wrong in committing it; he must be (*a*) incapable of knowing the nature of the act, or (*b*) that he is doing what is either wrong or contrary to law. (4) *Volenti non fit injuria.* The general rule is that nothing ought to be an offence by reason of any harm it

may cause to a person of ripe age, who, undeceived, has given a free and intelligent consent to suffer or take the risk of that harm; for an example, *see* illustration to section 87 P. C. (Sections 80, 84, 85, 87, I. P. C.)

4. *Q.* Give an illustration of "that nothing is an offence which is done by a person who is, or who by reason of a mistake of fact, in good faith believes himself to be, bound by law to do it."

A. A, a chowkeydar, attempts to arrest B as a thief. B makes a desperate resistance. A, in trying to arrest him, knocks him down, whereby B's arm is broken. A is guilty of no offence, for, even if he was wrong in supposing B to be a thief, the mistake was one of *fact*, and not a mistake of *law*. (Section 76, Ind. Cr. Codes, and notes.)

5. *Q.* Give an illustration of "that nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law in doing it."

A. A sees Z commit what appears to be a murder. A, in the exercise of the power he has by law, in good faith seizes Z in order to bring Z before the authorities. A has committed no offence, though it turns out that Z was acting in self-defence. The rule contained in this provision proceeds upon the supposition that the original intention was lawful. (Sec. 79, Ind. Cr. Codes, and notes.)

6. *Q.* What are the essentials of a valid consent? Is consent given under the influence of passion a valid consent under the Penal Code?

A. The consent must be free, and not given under fear of injury or misconception of fact, nor by a person unable to understand the nature and consequences of that to which he gives his consent, nor unless the contrary appears from the context, if the consent is given by a person under twelve years of age. Yes; a consent so given is valid. (Section 90, Ind. Cr. Codes, and notes.)

7. *Q.* Does the Indian Penal Code acknowledge the doctrine of English law, that a wife acting under the control of her husband is excusable? Would the legal fiction of the presumptive coercion of a wife be allowed as a valid plea under the Indian Penal Code?

A. There is no mention in the Penal Code, similar to this provision of the English law, of a wife acting under the coercion of her husband; the only provision relative to coercion in the Penal Code is contained in section 94, and applies alike to both sexes. There is no reason for presuming the doctrine of English law would be allowed as a valid plea in India. (Sec. 94, Ind. Cr. Codes, and notes.)

8. *Q.* Illustrate the maxim "De minimis non curat lex," as embodied in section 95, I. P. C.

A. As the definitions of the I. P. C. are framed, it is theft to dip a pen in another man's ink; mischief, to crumple one of his wafers; assault, to cover him with a cloud of dust by riding past him, &c. These, though within the letter of the law, are, as this maxim justly proves, not within its spirit, and are to be considered as innocent. (Sec. 95, Ind. Cr. Codes, and note.)

9. *Q.* What is the extent of the operation of the Indian Penal Code as regards local limits? And do its provisions apply to offences committed beyond local limits?

A. Its operation extends over the whole of the territories which are, or may become, vested in Her Majesty by the statute 21 & 22 Vict. chap. 106, except the settlement of Prince of Wales' Island, Singapore, and Malacca. Yes; offences committed beyond local limits, which by law may be tried within the territories. (See sections 1 and 2, I. P. C.; also section 19, Act V. of 1871, and section 11, Act XI. 1872.)

10. *Q.* How far out to sea does territorial right extend?

A. To at least three geographical miles. (Ind. Cr. Codes, *note* to section 2.)

11. *Q.* What is the object of the "*General Explanations*" given in chapter ii. of the Code? And what is the object of the "*Illustrations*" attached to the several sections of the Code? Are they (the Illustrations) Statute Law, the same as the body of the Code?

A. The intention of the framers of the Code, in framing these *General Explanations*, was to *define precisely* the meaning of the words contained in this chapter. All these definitions and interpretations of the penal provisions of the Code have been embodied and placed in one chapter to save undue repetition.

The *Illustrations* are intended to serve precisely the same purpose as examples in grammar; and as of examples in grammar, or in any science, it is not to be supposed that they ever supersede or

vary the rule they are intended to illustrate. They show, as far as they go, what the authors of the Code meant by the enactments. It would be as unreasonable for a judge to refuse to decide according to the illustration, in a case exactly parallel, as it would be in a student, in attempting to apply a rule of grammar, to refuse to follow the example set for the very purpose of guiding him in its application. Yet the example is not said to limit the rule; no more should the illustration be said to limit the enactment. No more is the illustration a part of the enactment than the example is a part of the rule in grammar, or a decided case upon the construction of a statute is a part of the statute; but each has a certain authority as a guide, and may not be unreasonably disregarded. (Law Com. 1st Rep. 1837.)

12. *Q.* To what does the rule of interpretation *cessante ratione legis, cessat lex ipsa* apply?

A. It applies only to precedents, and not to statute law; for in statute law, the law is one thing, the reason another. The law, as a command, may continue to exist, although its reason has ceased, and the law consequently ought to be abrogated; but there it is—the solemn and unchanged will of the legislator—which the judge should not take upon himself to set aside. But in the case of judiciary law, if the ground of the decision has fallen away or ceased, the *ratio decidendi* being gone, there is no law left. (Sec. 37, Aust. Jur. 652.)

13. *Q.* Define "person," "movable property," "dishonestly," "valuable security," "voluntarily," "injury," and "good faith."

A. "Person" includes any company, or association, or body of persons, whether incorporated or not. "Movable property" includes corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth. "Dishonestly," whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly. "Valuable security" denotes a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew, or had reason to believe, likely to cause it. The word "injury" denotes any harm whatever, illegally caused, to any person in body, mind, reputation, or property. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. (Sections 11, 22, 24, 30, 39, 44, 52, I. P. C.)

14. *Q.* Whom do the words "Public Servant" include?

A. (1) Every covenanted servant; (2) every commissioned officer, whilst serving under any Government; (3) every judge; (4) every officer of a court of justice; (5) every juryman, assessor, or member of a Punchayet; (6) every arbitrator; (7) every person holding any office by which he is empowered to confine any one; (8) every officer of Government whose duty it is, as such, to bring offenders to justice, or protect the public health, safety, or convenience; (9) every officer whose duty it is, as such, to expend any property, to make any survey, assessment, or contract, to execute any revenue process, to investigate or report on any matter affecting the pecuniary interest of Government; (10) officers of municipalities; (11) officers and servants of a railway company; (12) pound-keepers; (13) protectors and medical inspectors of emigrants; (14) registrars. The appointment by Government is not necessary to constitute a public servant. The term is applicable to any one who is in actual possession of the situation of a public servant, whether legally entitled to it or not. (Section 21, Ind. Cr. Codes.)

15. *Q.* Define "illegal," "act," "omission"; and state how illegal omissions are treated by the Code.

A. "Illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action. "Act" denotes as well a series of acts as a simple act, and "omission" denotes as well a series of omissions as a single omission. The word "act" includes writing and speaking. Words referring to acts *include* illegal omissions, except where a contrary intention appears from the context. (Sections 43, 32, 33, I. P. C.)

16. *Q.* What is the individual and collective responsibility of several persons joining in a criminal act?

A. Each of such persons is liable, as though the act were done by him alone. When such act is criminal, by reason of its being done with a criminal knowledge or intention, each of such persons is liable to the extent of his knowledge or intention. Several persons engaged in the commission of a criminal act may be guilty of different offences. (Sections 34, 35, and 38, I. P. C.)

17. *Q.* Define "offence."

A. Except in the clauses (*a*) and (*b*), hereafter mentioned, "offence" denotes a thing made punishable by this Code. (*a*) In chapter iv., and in the following sections, viz., 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221 to 225, 327, 329 to 331, 347, 348, 388, 389, and 445, the word "offence" denotes

a thing punishable under this Code, *or* under any special or local law. (*b*) In sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine. (Section 40, I. P. C.)

18. *Q.* What are the several kinds of punishment provided by the Indian Penal Code?

A. (1) Death; (2) transportation; (3) penal servitude; (4) imprisonment, simple or rigorous; (5) forfeiture; (6) fine; and (7), by section 1, Act VI. of 1864, whipping is added to the list of punishments described in section 53, I. P. C.

19. *Q.* Who has the power of commuting sentences of death and transportation?

A. The Government of India, or the Local Government. (Sections 54, 55, I. P. C.)

20. *Q.* In calculating fractions of terms of punishment, what is transportation for life reckoned as equivalent to?

A. Transportation for twenty years. (Section 57, I. P. C.)

21. *Q.* What is the longest term of *imprisonment* awardable under the Penal Code? and is any minimum term fixed?

A. Fourteen years is the maximum term fixed. The lowest term actually mentioned in the Code is twenty-four hours; but there is nothing against an imprisonment of five minutes, or an hour.

22. *Q.* Under what circumstances can the Court order forfeiture of the accused's property?

A. In cases of waging or attempting to wage war, or abetting the waging of war, or collecting arms, &c. with the intention of waging war against the Queen, the Court *must* order the accused's property to be forfeited. When an accused is convicted of an offence punishable with death, it is optional with the Court to order the forfeiture of the accused's movables and immovables; and, again, whenever any person is convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, it is optional to the Court to adjudge that the rents and profits of all the accused's movables and immovables during the period of his sentence be forfeited to Government, subject to a provision for the accused's family and dependents. Again, persons com-

mitting depredations on the territories of any power at peace with the Queen, or receiving property taken by such war or depredation, can be sentenced to forfeit any property used or intended to be used in such depredation, or acquired thereby, or so received; and the only other case is one in which a public servant unlawfully buys or bids for property: here the property, if purchased, shall be confiscated. (Sections 62, 121, 122, 126, 127, and 169, I. P. C.)

23. *Q.* What are the provisions laid down by the I. P. C. as regards imprisonment in default of payment of fine? Within what time may a fine be levied? And does the death of an offender discharge his property from liability?

A. Where an offender is sentenced to fine, he can, in default, be ordered to suffer imprisonment, rigorous or simple, in addition to the imprisonment to which he has been sentenced. It must not exceed one-fourth of the maximum term assigned to the offence. If the offence is punishable with fine only, the imprisonment in default is not to exceed two months for a fine under 50 rupees, four months for a fine under 100 rupees, or six months in any other case. When the fine is paid or levied, the imprisonment in default terminates. If before the expiration of imprisonment in default such a proportion of the fine be paid or levied that the term of imprisonment suffered in default is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. A fine may be levied within six years after the passing of the sentence, or at any time during the term of imprisonment. Death of offender does not discharge his property from liability. (Sections 64, 65, 67, 68, 69, 70, I. P. C.)

24. *Q.* What is the rule of law as to the limit of punishment for an offence which is made up of several offences? Give an example.

A. The offender shall not be punished with the punishment of more than any one of such his offences, unless it be so expressly provided; *e.g.*, this section applies to the case of a person charged with "housebreaking" under section 457, and "theft" committed on the same occasion under section 380, I. P. C. (Section 71, I. P. C.)

25. *Q.* When a prisoner is found guilty of one of several offences, and it is doubtful of which of such offences he is guilty, how is the Court to act? and what must the doubt relate to?

A. The offender shall be punished for that offence for which the lowest punishment is provided. The doubt referred to must relate to some incidental point which is of a quality important only as deter-

mining whether the offence falls technically under one designation or another; *e.g.*, theft, or criminal breach of trust. (Section 72, and notes, Ind. Cr. Codes, 44.)

26. *Q.* In what cases and for what periods may the Court order a prisoner to be kept in solitary confinement?

A. When a person is convicted of an offence sentenceable to rigorous imprisonment, to a period not exceeding three months in the whole, according to the following scale:—One month, if for more than six months; two months, if for more than six months and less than a year; three months, if the whole term exceeds one year. Such confinement in no case to exceed fourteen days at a time. (Sections 73 and 74, I. P. C.)

27. *Q.* What is the rule as to enhancement of punishment on a second conviction?

A. If a person is convicted a second time of an offence under chapters xii. or xvii. of the I. P. C., with imprisonment of either description for a term of three years or upwards, he is liable to double amount of punishment to which he would *otherwise* have been liable for the same. It is not necessary that a person should actually have undergone imprisonment for three years, as long as the *offence* of which he has been convicted *is punishable* with imprisonment for a term of three years; in fact, it is not necessary that any punishment of imprisonment be suffered; for instance, a prisoner may have been previously convicted of theft, and whipped; when subsequently convicted under chapter xvii., he is liable to the enhanced punishment here referred to. (Section 75 and *notes*, Ind. Cr. Codes, 46.)

28. *Q.* In what cases has a person a right of "private defence"?

A. To defend (1) his own body and the body of any other person against any offence affecting the human body; (2) his own, or another's movables or immovables against any act of theft, robbery, mischief, or criminal trespass, or any attempt to commit such; (3) against an act which would otherwise be an offence, but is not so by reason of the youth, unsoundness of mind, or misconception on the part of such person, or intoxication of the person doing such act. (Sections 97, 98, I. P. C.)

29. *Q.* Enumerate the acts against which there is no right of "private defence."

A. The right in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. There is no such right against an act which does not reasonably cause apprehension of death or grievous hurt, if done, or attempted to be done,

by or by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. That the warrant or writ is defective in the frame of it, or, if the manner of making arrest is illegal, is no extenuation for offering resistance to a public servant, as long as the act is *bonâ fide.* The right of private defence cannot legally be exercised when there is time to have recourse to the protection of the public authorities. (Sec. 99, Ind. Cr. Codes, and notes.)

30. *Q.* To what extent may the right be exercised?

A. To the extent of opposing force by force, to the infliction of such injury as is really necessary and legal. It in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. The right of private defence of the body and of property extends, under certain restrictions, to the voluntary causing of death or any other harm to the assailant. See sections 100 to 106. (Section 99 (4), I. P. C.)

31. *Q.* A is attacked by a mob, who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children, who are mingled with the mob. A fires and kills a child, is he guilty of any offence?

A. No; his right of private defence he has a right to exercise; and if he cannot effectually exercise that right without risk of harming an innocent person, his right of private defence extends to the running of that risk. (Section 106, I. P. C.)

32. *Q.* Suppose A, being insane, attempts to kill B, of what offence is A guilty? In such case would B have the same right of private defence which he would have if A were sane?

A. A is guilty of no offence. Yes, the same right of private defence. (Section 98, illustration *a.*)

33. *Q.* Suppose A enters by night a house which he has legally a right to enter, but B in good faith, supposing A to be a housebreaker, attacks him, of what offence is B guilty? Has A the same right of private defence against B which he would have if B had not acted under that misconception?

A. B commits no offence. Yes; A has the same right of private defence. (Section 98, illustration *b.*)

34. *Q.* A is attacked, and, without resisting, he goes home, arms himself with a bamboo, returns, and wounds B, who assaulted him. Has A overstepped the right of private defence given him in the I. P. C.? Give a reason for your answer.

A. Yes, he has overstepped his right. Resistance is allowable only in so far as to prevent the offence, and not to subsequent chastisement, as A's act most decidedly was. A's remedy was to have applied for the protection of the law, and to have procured its intervention for the culprit's punishment, and not to have taken the law into his own hands. (Ind. Cr. Codes, sections 100 and 105, and *notes.*)

35. *Q.* When is a person said to abet the doing of a thing? and give an illustration.

A. When he—(1) instigates (which includes any misrepresentation or concealment whereby the act is caused, or attempted to be caused); (2) engages in any conspiracy for the doing of that thing; and (3) intentionally aids in doing that thing: *e. g.*, A, a public officer, is authorized by a warrant to apprehend B; C, knowing that fact, and also that D is not B, wilfully represents to A that D is B, and thereby causes A to apprehend D. Here C abets the apprehension of D. (Section 107, I. P. C., and illustration.)

36. *Q.* Does the Indian Penal Code contemplate any acts of subsequent abetment, or provide for the punishment of such offences? Are there any exceptions to this rule?

A. Not as a rule. The exceptions are sections 212 and 218, I. P. C. (Section 101, Ind. Cr. Codes, and *notes.*)

37. *Q.* What is the punishment of abetment, (1) if the act abetted is committed in consequence, and where no express provision is made for its punishment? (2) where the person abetted does the act with a different intention or knowledge from that of the abettor? and (3) where the offence committed in consequence of the abetment is an offence punishable with death?

A. (1) The same as that provided for the offence; (2) with the punishment provided for the offence which would have been com-

mitted with the intention of the abettor; (3) the abetment will be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. (Sections 109, 110, 115, I. P. C.)

38. *Q.* What is the liability of the abettor, (1) where one act is abetted, and another act is done; (2) where an effect caused by the act abetted is different from that intended by the abettor?

A. (1) He is liable for the act done in the same manner and to the same extent as if he had directly abetted it, provided the act done was a probable consequence of the abetment; and (2) so likewise if the abetment causes a different effect from that intended by the abettor. (Sections 111, 113, I. P. C.)

39. *Q.* What are the provisions in the Indian Penal Code for the punishment of what the English law calls "Principals in the second degree"?

A. That a person present abetting an offence is to be *deemed* to have committed the offence, though he does not in fact do so any more than a principal in the second degree does; for instance, if A instigates B to murder Z, he commits abetment; if present, he is by section 114 to be deemed to have committed the offence, and is punishable as a principal. The plain meaning of the provision in section 114 is that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it. (Section 114, Ind. Cr. Codes and notes.)

40. *Q.* Illustrate a case of where abetment in British India of an offence, itself committed beyond British Indian territory, is specially rendered punishable *in* India.

A. B in India abets the insurrectien against the Queen's Government of Ceylon by sending arms to the insurgents. (Illustration (*b*), section 121, I. P. C.)

41. *Q.* Does the Indian Penal Code provide for the punishment of concealing a design to commit an offence? If so, give illustrations.

A. Yes. (1) A, knowing that a Dacoity is about to be committed at B, falsely informs a magistrate that Dacoity is about to be committed at C, and thereby misleads the magistrate with intent to facilitate the commission of the offence. The Dacoity is committed at B, in pursuance of the design. A is punishable for concealing a

design to commit an offence; his omission being not merely a *simple* omission but an *illegal* omission. (2) A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, knowing that B designs to commit robbery, omits to give information, with intent to facilitate the commission of such offence—A is punishable. Likewise any one concealing a design to commit an offence punishable with imprisonment, *if the offence is committed*, can get one-fourth of the imprisonment provided for the offence, and if *the offence be not committed*, he can nevertheless get one-eighth of the imprisonment provided for the offence.

The offence contemplated in these sections can only be committed by concealing a design, or making a false representation, *with intent to facilitate* the commission of an offence. (Sections 118, 119, 120, Ind. Cr. Codes.)

42. *Q.* Specify the classes of crimes which the Code constitutes offences against the State.

A. (1) Waging war against the Queen, conspiring to commit such an offence, collecting arms, &c., with such intention, concealing design with intent to facilitate the waging of such war; (2) attempting by criminal force to overawe Government; (3) seditious libel; (4) waging war against a power at peace with the Queen; and (5) allowing or suffering prisoner of state or war to escape from custody. (Sections 121 to 130, I. P. C.)

43. *Q.* Is there any difference between the English and Indian law as to the number of witnesses required to prove the offence of treason?

A. By English law, as a rule, two witnesses are requisite to prove the treason, or overt acts of the same treason, unless the defendant confess; one witness is sufficient to prove a collateral fact, such as accused is a British subject.

By the Indian Evidence Act no particular number of witnesses are in any case required for the proof of any fact; so that in India one witness, if credited, would be sufficient. (Tay. Ev. 872; I. E. A. 134; Ind. Cr. Codes, 87.)

44. *Q.* Instance a case under the Indian Penal Code where the maxim, "Omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium," applies.

A. A public servant negligently suffering a prisoner of state or war in his custody to escape, or a public servant voluntarily allowing such a prisoner to escape. In such a case it is sufficient to prove that the accused acted in the capacity described. It is unnecessary to prove his appointment. It is further unnecessary to prove the negligence,

as the law will imply it. (Sections 128, 129, Ind. Cr. Codes, and *notes*. See also section 124.) As to parties named in that section, the above remarks apply.

45. *Q.* What are the points necessary to be established before a conviction can be gained for concealing the existence of a design to wage war against the Queen, with intent to facilitate the waging of such war?

A. (1) The existence of a design to wage such war; (2) knowledge on the part of the accused of such existing design; (3) concealment of such design by act or illegal omission on the part of the accused; and (4) intent with which such design was concealed. (Section 123, Ind. Cr. Codes, and *note*.)

46. *Q.* What is the law under the Indian Penal Code as to seditious libels? and does it differ from the law on the same subject in England?

A. Whoever by words, either spoken or intended to be read, or by signs or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection of the Government, is punishable under the Indian Penal Code for sedition. This is substantially the same as the law of England at the present day. (Section 124A, Ind. Cr. Codes, and notes.)

47. *Q.* What is the established rule as to the admissibility in evidence in prosecutions for conspiracy, as to acts done by one of the conspirators in pursuance of the original concerted plan, and with reference to the common object?

A. Any act done by one is, in contemplation of the law, the act of the whole party. It follows, therefore, that any writings, or verbal expressions, being acts in themselves, or accompanying or explaining other acts, and so being part of the *res gestæ*, and which are brought home to one conspirator, are evidence against the other conspirators, provided it sufficiently appear that they were used in the furtherance of the common design. (Ind. Cr. Codes, page 92.)

48. *Q.* Why is the offence of conspiring by criminal force more severely penal than the offence of actually taking part in an unlawful assembly having for its object the overawing of the Government?

A. The reason is this, that persons who by conspiring together

to bring about such a result, set the whole matter in motion, seem more criminal and far more deserving of punishment than those who are their mere tools, and only take part in such an assembly. (Gaz. Ind. of 1870, p. 1312.)

49. *Q.* To whom do the provisions of the chapter "Of offences relating to the Army and Navy" refer? and with what object was this chapter vii. framed?

A. The provisions of this chapter relate to the punishment of persons who, *not being military*, abet military crimes. The laws to which the army and navy are specially subject are excepted. (See sections 5 and 139.) It is because the general law regarding abetting of offences will not reach a person who encourages those who are subject to military law to commit breaches of discipline, that this chapter has been framed. (Ind. Cr. Codes, chap. vii. p. 103.)

50. *Q.* Specify the classes of crimes which the Code constitutes offences relating to the Army and Navy.

A. (1) Abetting mutiny, or attempting to seduce a soldier or sailor from his duty; (2) abetment of the desertion of a soldier or a sailor; (3) harbouring a deserter; (4) abetment of act of insubordination of a soldier or a sailor; (5) wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Persons subject to the Articles of War are not punishable under the Code for any of the above offences. See answer to preceding question. (Sections 130 to 140, I. P. C.)

51. *Q.* A fraudulently obtains property by assuming the uniform of a soldier; of what offence is A guilty?

A. Cheating. (Ind. Cr. Codes, p. 107, note to sec. 140.)

52. *Q.* Is any one exempted from punishment for knowingly harbouring a deserter?

A. The exceptions extend to the case in which the harbour is given by a wife to her husband. (Section 136, I. P. C.)

53. *Q.* Explain fully what is meant by an "unlawful assembly," and when is a person said to be a member of an "unlawful assembly"?

A. An assembly of five or more persons, if the common object of the persons composing that assembly be, (1) to overawe the Government or any public servant by criminal force, or the show of it; (2)

or to resist any legal process; or (3) to commit any offence; or (4) to deprive any person of property or enjoyment of a right; (5) to compel any person to do what he is not legally bound to do.

Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. (Sections 141 and 142, I. P. C.)

54. *Q.* Define "rioting" and "affray." What is it necessary to prove to support a conviction for an affray? and in what way does an "*affray*" differ from a "*riot*"? - Illustrate your answer as to the difference alluded to.

A. Whenever force or violence is used by an unlawful assembly, or any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an "affray." Necessary to prove—(1) the affray or fighting; (2) that it was in a public place; (3) that it disturbed the public peace; and (4) that two or more persons were engaged in it.

"Affray" differs from a "riot" in not being premeditated; *e.g.*, a number of persons meet together at a market, and happen, on a sudden quarrel, to engage in fighting. They are guilty, not of a riot, but only of an affray, because the design of their meeting was innocent and lawful, and the breach of the peace happened without any previous intention. (Sections 146, 159, Ind. Cr. Codes, and notes.)

55. *Q.* What is the principle of the English Criminal Law and the Indian Penal Code in the treatment of the several members of an unlawful assembly? Illustrate your answer.

A. The law treats all as uniting in one crime, and holds all liable to punishment: *all are principals*. *E.g.*, (1) in law, the stroke which kills, whoever gives it, is the stroke of all the party; (2) all present and assisting rioters are guilty of the death of the party slain, though *they* did *not* actually strike him. (The Sissinghurst House case, 1 Hale P. C.; also Macally's case, 9 Coke's Reports.) The main idea running through the common law of England, and the provisions of the Penal Code, is, that where a deliberate intention exists to commit a crime, and a number of men band themselves together for carrying out that intention into execution, the intention constitutes the guilt, and all those who take part in it become equally guilty by the mere fact of lending their aid or presence, be it merely acting or assenting, while the perpetration of the offence is progressing. (Section 149, Ind. Cr. Codes, and *notes*.)

56. *Q.* What is the law—(1) *as to hiring* a person to join an unlawful assembly, and (2) as to *being hired* for this same purpose? And under what sections are "attempts" (*a*) at hiring, and (*b*) at being hired, punishable?

A. The hiring must be complete to bring the parties under section 150, P. C., and so, when the hiring is not complete, the offence will come under sections 150 and 511. Section 158 deals with a similar offence, *viz.*, the being hired to take part in an unlawful assembly or riot. The difference in the two sections lies in that the former section refers to the hirer, and the latter to the hired; the former to a complete hiring, the latter to even an attempt at being hired. The attempt at the offence mentioned in section 150 is punishable under section 511, P. C.; the attempt under section 158, and punishment for same, is contained in the section itself. (Sec. 150, Ind. Cr. Codes.)

57. *Q.* State the duties and the liabilities of the owner, occupier, agent, or manager of any land on which an unlawful assembly is held, or for whose benefit a riot is committed.

A. Their duties are to give the earliest notice of such offences, or intent to commit such offences, at the nearest police station, and use all lawful means to prevent the offence being committed, and, in the event of its taking place, to use all lawful means to disperse such assembly, or repress such riot. The owner is liable for the negligence of his agents. In default of using all the requisite and lawful means at their command, the owner, occupier, agent, or manager is punishable with heavy fines. (Sections 154 to 156, I. P. C.)

58. *Q.* Chapter ix. of the Code deals with offences by, or relating to, public servants. What offences was this chapter specially framed to meet? Does it in any way allude to offences common between public servants and the mass of the community?

A. So as to punish offences committed *by* public servants, also offences *relating* to public servants, though *not* committed by them. The offences common between public servants and the mass of the community are left to the general provisions of the Code, because it is desirable that the property of the State shall in general be protected by exactly the same laws as are considered sufficient for the protection of the property of the subject.

59. *Q.* What are the principles for guidance with

reference to the criminal liability of public servants?

A. (1) If a man accept an office of trust and confidence concerning the public, especially when attended with profit, he is answerable to the Crown for his execution of that office, and if so, he can only be answerable in a criminal prosecution, for the Crown cannot otherwise punish his behaviour; (2) where there is a breach of trust, a fraud, or imposition in a matter concerning the public, which as between subject and subject would only be answerable; yet, as it concerns the Crown and the public, it is indictable. (Lord Mansfield in R. *v.* Bembridge.)

60. *Q.* Explain the terms "gratification," "legal remuneration," "a motive or reward for doing," as defined in section 161, I. P. C.

A. The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money. The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept. A person who receives a gratification as "a motive for doing" what he does not intend to do, or as "a reward for doing" what he has not done, comes within these words. (Explanations, sec. 161, I. P. C.)

61. *Q.* Taking a gratification for the exercise of *personal influence* with a public servant is punishable under the Penal Code. Give your meaning of the term "*personal influence*" here used.

A. It means that influence which one man possesses over another, irrespective of the merits of the case upon which it is brought to bear. (Section 163, Ind. Cr. Codes, notes.)

62. *Q.* Z's brother is apprehended and taken before A, a magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount; Z pays A for the shares accordingly. Is A guilty of any offence under the Penal Code?

A. Yes; he is guilty, as being a public servant, and obtaining a valuable thing, without consideration, from a person concerned in a proceeding transacted by such public servant. (Section 165, I. P. C.)

63. *Q.* What is the law in India as to public servants trading?

A. 33 Geo. III. chap. 52, sec. 137, and 3 & 4 Wm. IV. chap. 85, sec. 76, forbid any person employed or concerned in the collection of the revenues, or the administration of justice, to be concerned in any trade or traffic within or without British India. Regulation II. of 1793 prohibited the Board of Revenue to be concerned in any trade or commerce. Regulation XXV. of 1803, and Regulation II. of 1814, prohibit any assistant, collector, or judge, from being concerned in such transactions. Regulation XX. of 1817 prohibits police officers from trading. Act VIII. 1855 prohibits the Administrator-General trading, and section 168 P. C. provides the punishment for public servants unlawfully engaging in trade. (Ind. Cr. Code, p. 131.)

64. *Q.* For a conviction for personating a public servant, what must be proved?

A. That both the office and the person personated exist. The offence would, it appears, be committed though the person personated was dead at the time the offence was committed. (R. *v.* Brown; R. *v.* Martin; Ind. Cr. Codes, section 170, and notes.)

65. *Q.* Specify the classes of contempts dealt with under chapter x. of the Indian Penal Code; and give an example of each.

A. (1) The wilful omission or evasion of the performance of a public duty; (2) giving false information; (3) disobeying or obstructing a public servant; (4) refusing to give information when required by one having authority to demand such information. Local authorities are empowered to forbid acts which they consider as dangerous to the public peace, health, safety, or convenience; and disobedience of such order is an offence. (1) Absconding to avoid service of summons, or preventing the service of such summons, or non-attendance in obedience to a summons, or wilful omission to produce a document. (2) A landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the magistrate that the death has occurred by accident, in consequence of the bite of a snake. (3) Offering resistance to the taking of property by lawful authority, or obstructing sale of property, or illegally bidding for property, or wilfully obstructing a public servant in the discharge of his duties. (4) Refusing to bind himself by oath, or refusing to answer a public servant authorized to question; and for a further example see answer to the following question. (Sections 172 to 186.)

66. *Q.* Give an instance of where a person refusing to sign a statement when so required by a public servant is guilty of an offence.

A. A, a witness to an inquiry under section 133, Act X. 1872,

concurs in the report made by the police, but refuses to sign it when required to do so; or again, when, in order to the issuing of a summons or warrant, A makes a complaint, and is examined by the magistrate, who reduces A's examination into writing, and calls upon A to sign it, A being able to write, and A refuses to sign such statement. (Section 180, and notes, Ind. Cr. Codes.)

67. *Q.* A bids for the lease of a ferry sold at a public auction by a magistrate, and subsequently fails to complete the sale. Has he committed any crime under the Indian Penal Code?

A. Yes; he is guilty of contempt under section 185, I. P. C. (R. *v.* Reazoodeen, Ind. Cr. Code, 185), if he bid, not intending to perform the obligation under which he lays himself by such bidding.

68. *Q.* Under what circumstances is a bailiff, breaking open the doors of a third person, a trespasser? and give an instance where the owner of a house would not be guilty, under the provisions of the Penal Code, for obstructing a bailiff from breaking open his doors.

A. If he break the doors of a third person in order to execute a decree against a judgment debtor, if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under the I.P.C. (Section 183, Ind. Cr. Codes.)

69. *Q.* When is a person said to give "false evidence" and when to "fabricate false evidence"?

A. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he knows or believes to be false, gives "false evidence." Whoever causes any circumstances to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending such circumstance, &c., may appear in evidence in any judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, &c., so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion on any material point, "fabricates false evidence." (Sections 191–192, I.P.C.)

70. *Q.* B, a Chokeydar, intentionally omits to give evidence of a murder. Is B guilty of omission to

give notice or information to a public servant, under section 176, I.P.C.; or is he guilty of intentional omission to give information of an offence under section 202, I.P.C.? And state the reason for your answer.

A. He is punishable under section 202. This section is more especially with reference to offences against *public justice;* section 176, more especially with reference to offences against public servants and contempts of the orders of public servants duly promulgated. (Section 202, and notes, Ind. Cr. Codes.)

71. *Q.* Before a person can be convicted of intentional omission to give information of an offence, what is it necessary to prove?

A. (1) That he has knowledge or reason to believe that some offence has been committed; (2) an *intentional* omission to give *any* information respecting that offence; and (3) that he is legally bound to give such information. (Ind. Cr. Codes, section 202.)

72. *Q.* What are the provisions in the Penal Code for the punishment of parties—(1) omitting to produce documents, and (2) secreting or destroying documents required to be produced as evidence in a Court of Justice?

A. Under section 175, parties are punishable for intentionally omitting to produce or deliver a document to a public servant calling for it. Under section 204, *any* document, the production of which can be lawfully required, if destroyed or secreted by a person with intent to evade its production, such person can be punished with imprisonment or fine, or both. (Sections 175 and 204, I. P. C.)

73. *Q.* What is necessary to constitute the offence of false personation, for the purpose of any act or proceeding in a suit?

A. It must be shown that the assumed name was used as a means of representing some other known individual. A *mere* "alias" or "incog." is no crime. The gist of the offence is the feigning to be another known person. (Section 205, and note, Ind. Cr. Codes.)

In R. *v.* Biltoo Kahar, 1 I. J. 123, it was held that it was criminal to personate an imaginary person.

74. *Q.* How does the Penal Code deal with the receiver, acceptor, or claimer of property to prevent its seizure as a forfeiture?

A. (1) Fraudulent removal or concealment of property, to prevent its seizure as a forfeiture, or in execution of a decree, is an offence punishable with imprisonment or fine, or both. The offence may be committed by any one, and not necessarily by the owners of the said property. The gist of the offence is *fraud.* A fraudulent claim, to prevent its seizure as a forfeiture, or in execution of a decree, is also an offence punishable with imprisonment or fine, or both. (Sections 206, 207, Ind. Cr. Codes, and notes.)

75. *Q.* Does the Penal Code provide for the punishment of parties entering into a collusion to defeat their creditors?

A. Sections 206 to 210, I. P. C., refer to frauds committed upon Courts of Justice; such as entering into a collusion to defeat their creditors. (*Vide* answer to last preceding question.) Besides these, there is the dishonestly making a false claim in a Court of Justice, and fraudulently obtaining a decree for a sum not due. Sections 421 to 424, I. P. C., refer to fraudulent deeds and dispositions of property, where the accused is dealt with as committing such fraud against his creditors. It is to be observed that the offences included in the former sections, viz. 206 to 210, refer to frauds committed *upon Courts of Justice.* The latter sections, 421 to 424, refer to frauds *against creditors.* (Sections 206 to 210, 421 to 424, I. P. C.)

76. *Q.* What is it necessary to prove to establish a charge under section 211, I. P. C., "of a false charge of offence with intent to injure"?

A. It is necessary to show that the accused knew, or had reason to believe, that an offence had been committed. The offender must have instituted, or caused to be instituted, a criminal proceeding. This section is applicable to those cases only in which the charge is "*falsely*" made, *with intent to cause injury, and with the knowledge that there is no just or lawful ground for such charge.* The mere presentation of a petition containing a false allegation, but not praying for judicial inquiry, does not constitute this offence. (Ind. Cr. Codes, sec. 211, and notes.)

77. *Q.* What is a "judicial proceeding," within the meaning of the section of the Penal Code which makes it an offence to give false evidence intentionally "in a stage of a judicial proceeding"?

A. (1) A trial before a Court Martial, or a Military Court of Request; (2) an investigation directed by law, preliminary to a proceeding before a Court of Justice, though that investigation may not take place before a Court of Justice; (3) an investigation directed by a Court of Justice according to law, and conducted

under authority of a Court of Justice, though that investigation may not take place before a Court of Justice. (Explanations 1, 2, 3, section 193, I. P. C.)

78. *Q.* What are the offences which may be committed under the Penal Code by harbouring or screening an offender? And state the exception, if any, to the offence of harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

A. (1) Harbouring persons who have actually committed some offence under the Penal Code, or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards; (2) taking any gratification to screen an offender from punishment, or offering gift or restoration of property in consideration of screening offender; (3) harbouring an offender who has escaped from custody, or whose apprehension has been ordered. The exception is the harbouring or concealing by the husband or wife of the offender. (Sections 212, 213, 214, 216, I. P. C.)

79. *Q.* State the law with regard to compounding offences.

A. Section 188, C. C. P., says,—"In the case of offences which may *lawfully be compounded*, injured persons may compound the offence out of Court, or in Court with the permission of the Court." The explanation to section 214, I. P. C., declares that an offence may be compounded which "consists only of an act irrespective of the intention of the offender, and for which the person injured may bring a civil action;" *e. g.*, an assault with intent to commit murder cannot be lawfully compounded, because *the intention of the offender is the element of the offence;* nor can bigamy be lawfully compounded, *as it cannot be* made the subject of a civil action; but an assault or adultery can be compounded. The element of a defined intention as a necessary part of an offence, and the right to bring a civil action, are the tests by which compoundable and non-compoundable offences are distinguished. Section 214, P. C., deals merely with a question of substantive law, and declares it to be an offence to compromise certain classes of offences not coming within the section annexed to it. (Ind. Cr. Codes, pp. 182 and 566.)

80. *Q.* Under what circumstances, and in what manner, is an *attempt* to commit an offence punishable?

A. Attempts to commit Offences.—Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment,

or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both; *e.g.*, A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section. (Section 511, I. P. C.)

81. *Q.* Give an example of a case of taking gratification under pretence to help to recover stolen property, and failing to use all means in his power for the offender's apprehension and conviction.

A. A breaks into B's tent and steals certain papers. A reward is offered for the apprehension of the thief, and a reward promised, even if the missing papers were found, although conviction be unattainable. B, a tracker, recovers the property, and says he found it in a field, and denies all knowledge of the thieves, B being all the time a partner in the theft, and having received the reward for procuring restoration of property without using any means to apprehend the offenders. (Sec. 215, Ind. Cr. Codes.)

82. *Q.* What provisions are there in the Penal Code regarding offences committed by public servants attempting to shield offenders from punishment?

A. (1) A public servant intentionally disobeying, with the intent and knowledge that by such disobedience he will save a person from legal punishment; (2) framing an incorrect record or writing with a like intent; (3) intentionally omitting to apprehend, when bound by law to apprehend, a person charged with an offence, or person under sentence of a Court of Justice; (4) negligently suffering a person in custody to escape. (Sections 217 to 223, I. P. C.)

83. *Q.* Define "coin" and "Queen's coin."

A. "Coin" is metal used for the time being as money, and stamped and issued by the authority of some state or sovereign power in order to be so used.

Coin stamped and issued by the authority of the Queen, or by the Government of India, or of the Government of any presidency, or of any Government in the Queen's dominions, is the Queen's coin. (Sec. 230, I. P. C.)

84. *Q.* What is necessary to constitute the offence of counterfeiting the Queen's coin?

A. There must be an intention that the coins will be used as Queen's coin, or knowledge that they are likely to be used as such. Such knowledge or intention will be inferred from the mere fact of counterfeiting, unless under circumstances which conclusively negative it. (Sec. 232, Ind. C. Codes, and notes.)

85. *Q.* What is the law as to abetting in British India the counterfeiting of coin out of British India?

A. Whoever, being within British India, abets the counterfeiting of coin out of British India, is punishable in the same manner as if he abetted the counterfeiting of such coin within British India. This provision provides for what would not otherwise be an offence under the Penal Code. (Sec. 236, Ind. Cr. Codes.)

86. *Q.* What facts must be proved to convict an offender of "delivery of Queen's coin, possessed with the knowledge that it is counterfeit"?

A. (1) Delivery of the coin, or attempt to induce some one to receive such coin; (2) that the said coin is counterfeit; (3) that accused knew that the coin was counterfeit. (Section 240, Ind. Cr. Codes.)

87. *Q.* Specify the class of crimes which the Code constitutes offences against "Government stamps."

A. (1) Counterfeiting Government stamp; (2) having possession of an instrument or material for such purpose; (3) making or selling instruments for the above purpose; (4) selling, or having possession of, or using as genuine a counterfeit stamp, or using a Government stamp known to have been used before; (5) effacing writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government, or, for the like reason, erasing of a mark denoting that a stamp has been used. (Sections 255 to 263, I. P. C.)

88. *Q.* Specify the classes of crimes which the Code constitutes offences relating to weights and measures.

A. (1) Fraudulent use of false implement for weighing; (2) fraudulent use of false weight or measure; (3) being in possession of false weights or measures; (4) making or selling false weights or measures. (Sections 264 to 267, I. P. C.)

89. *Q.* Define "public nuisance."

A. Doing any act, or being guilty of an illegal omission, which

causes any common injury, danger, or annoyance to the public, or people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage. (Section 268, I. P. C.)

90. *Q.* Detail the offences under the head of adulteration of food or drink, or drugs.

A. Adulteration of food or drink,—making such article noxious as food or drink which is intended for sale; (2) sale of noxious food or drink; (3) adulteration of drugs, or medical preparations, in such a manner as to lessen their efficacy, or change their operation, or make the drug noxious; (4) selling, offering for sale, or causing to be used for medicinal purposes, drugs known to have been adulterated; (5) knowingly selling, or offering or exposing for sale, or issuing for medicinal purposes, any drug as a different drug or preparation. (Sections 272, 276, I. P. C.)

91. *Q.* What are the offences which, under the Penal Code, may be committed by the rash or negligent use of—(1) poison, or (2) fire, and (3) by rash or negligent navigation of a vessel, and (4) by conveyance of passengers in an overloaded ship?

A. (1) A person knowingly or negligently omitting to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, is criminally liable. (2) So also with fire, or any combustible matter. (3) Whoever navigates a vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, is liable to punishment. (4) Whoever knowingly or negligently conveys, or causes to be conveyed, *for hire*, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, is punishable with fine or imprisonment, or both. (Sections 280, 282, 284, 285, I. P. C.)

92. *Q.* What is the law prohibiting the sale of obscene books and repeating obscene songs?

A. The sale, distribution, importation, printing for sale or hire, or wilfully exhibiting to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempting or offering so to do, is an offence. (A representation, sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any

religious purpose, is excepted.) Having in possession any such obscene books or things as mentioned above for sale is an offence, as also singing, reciting, or uttering, in or near any public place, any obscene song, ballad, or words, to the annoyance of another. (Sections 292 to 294, I. P. C.)

93. *Q.* What are the laws against gaming and lotteries in India? and by whom are prosecutions to be instituted for offences under section 294 A?

A. Acts XXI. of 1857, and III. of 1867, deal with gambling in the public streets, and in gaming-houses, and keepers of gaming-houses, and section 294A deals with those who keep a lottery office not authorized by Government, and those who invest in tickets in such an office or lottery. No charge of an offence under this section shall be entertained by any Court unless the prosecution is instituted by order of, or under authority from, the Local Government. (Section 294, I. P. C.)

94. *Q.* What are the provisions of the Code which protect persons engaged in the performance of religious worship or religious ceremonies from insult and disturbance?

A. (1) Injuring or defiling any place of worship, or sacred object, with intent to insult the religion of any class; (2) voluntarily disturbing a religious ceremony; (3) trespassing on burial-places, or offering any indignity to any human corpse, or disturbing a funeral ceremony, with the intention of wounding any person's feelings, or insulting his religion; and (4) uttering words, or making sounds or gestures, with deliberate intent to wound the religious feelings of any person, are all offences punishable under the Penal Code. (Sections 295 to 298, I. P. C.)

95. *Q.* Enumerate the different classes of homicide.

A. (1) Culpable homicide.
(2) Culpable homicide not amounting to murder.
(3) Justifiable homicide.

96. *Q.* Under what circumstances would it be held that a person had committed culpable homicide?

A. When death is caused by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death. The following "are deemed to have caused death":—(1) Causing bodily injury to another who is labouring under any disease or bodily infirmity, and thereby accelerates his

death; *e.g.*, A has cholera, of which there is no doubt he must die; B so doses him that death is accelerated, and A dies a day or so, or a few hours, sooner, by the aggravation of the disease from overdosing: B has caused A's death. (2) Where death is caused by bodily injury, the person causing such injury shall be deemed to have caused death, although, by resorting to proper remedies, and skilful treatment, the death might have been prevented; *e.g.*, A wounds B; the bodily injury so inflicted brings on fever, which fever might have been allayed, and death prevented, had A resorted to proper remedies. B dies from fever brought on by the wound. A has caused B's death. (3) The causing of the death of a child *in* the mother's womb is not homicide; but it may amount to culpable homicide to cause the death of a *living* child, if *any part* of that child has been brought forth, though the child may not have breathed or been completely born. (Section 299, Ind. Cr. Codes, and explanations.)

97. *Q.* Is bodily injury to a child *in* the mother's womb punishable under the Code?

A. Yes. Under sections 315 and 316, I. P. C., an act done with intent to prevent a child being born alive, and also causing the death of a quick unborn child, are offences.

98. *Q.* Is causing the death of a living child "*en ventre sa mère*" deemed "to cause death" within the meaning of section 299, I. P. C.?

A. No. See explanation 3, section 299, I. P. C. The life of the child, so long as *no part* of it has been brought forth, is looked on by the law as a part of the mother's life, and not as having an existence independent of its mother.

99. *Q.* When would culpable homicide amount to murder?

A. Except in the five cases hereinafter mentioned, culpable homicide is murder, if the act by which the death is caused is done —(1) with intent to cause death; (2) with intent to cause such injury as the offender knows to be likely to cause death; (3) with intent to cause such bodily injury as is sufficient in the ordinary course of nature to cause death; and (4) knowing that the act is so eminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and such act is committed without any excuse for incurring the risk of causing death or such injury. The *exceptions* are—(1) whilst the offender is deprived of the power of self-control by grave and sudden provocation; (*a*) the provocation must not be sought or voluntarily provoked by offender as an excuse for the offence; (*b*) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful

exercise of his power; (*c*) that the provocation is not given by anything done in lawfully exercising the right of private defence. (2) If the offender in good faith in exercising his right of private defence without premeditation, and without intent, causes death. (3) If the offender, being a public servant, or aiding a public servant acting for public justice, exceeds his powers and causes death by an act which he in good faith believes to be lawful and necessary, and without ill-will toward the deceased. (4) Without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel, and the accused having taken no undue advantage. (5) When the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent. (Section 300, I. P. C., and exceptions.)

100. *Q.* What is the excepted case in which culpable homicide committed upon provocation is not murder? and to what provisoes is it subject?

A. See answer to the last preceding question, *Exception I.*, and proviso.

101. *Q.* Z, a Hindu widow, consents to be burned with the corpse of her husband. A kindles the pile; B, C, and D are present aiding the suttee. (1) In the event of Z being burned to death, if she is above the age of 18 years; (2) if she is under 18 years; and (3) in the event of her being rescued before sustaining any hurt,—of what offences, under each of such circumstances, are A, B, C, and D guilty?

A. In the *first* case, A has committed culpable homicide not amounting to murder, and B, C, and D have abetted that offence. In the *second* case, A has committed murder, and B, C, and D abetment of murder (*vide* section 300, Exception 5). In the *third* case, A is guilty of attempt to commit culpable homicide not amounting to murder, or murder, as the case may be; and B, C, and D of abetment of that attempt. (Ind. Cr. Codes, page 249.)

102. *Q.* Would an "illegal omission" be equivalent to an act done? or, in other words, can "illegal omissions" and their consequences, as well as "acts," amount to culpable homicide? If so, under what provisions of the Code? And give an example.

A. Yes; under the provisions of sections 32 and 299, I. P. C., read

together; *e.g.*, a policeman, placed by authority near a bridge carried away by floods, omits to tell B that by proceeding in the dark he will probably be killed; B falls over the bridge and is killed,—A is guilty of murder. (Sections 32, 299, Ind. Cr. Codes.)

103. *Q.* A woman intending to murder her husband, made three cakes for his dinner, into two of which she put poison; the third she made as usual, and placed in it no poison. Previous to her husband's return, two small children came to her house, and she, to please them, gave them a piece of, as she thought, the cake without poison, but by mistake a piece of the poisonous cake: the children died. Was she guilty of culpable homicide by causing the death of a person other than the person whose death was intended, as provided for in section 301, I. P. C.?

A. No; her two acts were wholly separate and distinct. Had the children of their own accord taken of these cakes, and death ensued without her knowledge, she would, of course, have come under this section; but, under the above circumstances, there were *two acts* done by the accused,—(1) that of making the cakes, and (2) that of introducing the poison. The cake she made without poison was not intended to cause death, nor can it be said that she knew that the consumption of *that* cake was likely to cause death: this act was not capable of causing death in the natural and ordinary course of events. (Ind. Cr. Codes, page 250.)

104. *Q.* What is the punishment for murder by a life convict?

A. Death. (Section 303, I. P. C.)

105. *Q.* What are the provisions in the Code for the offence of "manslaughter by negligence"?

A. If the offence does not amount to culpable homicide, the offence is punishable, under section 304 A (a section added to the Penal Code by Act XXVII. of 1870), with imprisonment for two years, or with fine, or both.

106. *Q.* In order to constitute the offence of "attempt to murder," contained in section 307, I. P. C., what is necessary?

A. That the act committed by the prisoner must be an act *capable of causing death.* An act may amount to an attempt to murder under

section 511, coupled with section 299, which does not satisfy all the requirements of this section, 307. (Section 307, I. P. C.)

107. *Q.* What is that offence under the Penal Code for the "*attempt*" at which a punishment is provided, but there is no provision for the actual commission of the offence ?*

A. Suicide.

108. *Q.* Define "thug"; and what is the punishment for being a thug ?

A. Whoever, at any time after the passing of the Penal Code, shall have been habitually associated with any other, or others, for the purpose of committing robbery, or child-stealing, by means of, or accompanied with, murder.

Punishment—Transportation for life, and fine. (Sections 310, 311, I. P. C.)

109. *Q.* Give briefly the law prohibitory of criminal abortion in India.

A. (1) Voluntarily causing *a woman with child to miscarry*, if such miscarriage be *not caused in good faith*, for the purpose of saving the woman's life, is an offence. A woman who causes herself to miscarry is within the meaning of section 315, I. P. C. This offence can only be when the woman is *in fact* pregnant; to constitute the act of abetment it is not necessary that the act abetted should be committed. (2) Causing miscarriage without the woman's consent, be she *quick* with child or not. (3) Death caused by an act done with intent to cause miscarriage. *It is not essential* to this offence that the offender should know that the act is likely to cause death. *It is essential* that the woman should be actually pregnant, and not merely erroneously believed to be pregnant. (4) Act done with intent to prevent a child being born alive, or to cause it to die after birth. (5) Causing the death of a quick unborn child by an act not amounting to culpable homicide. See illustration to section 316, I. P. C. (Sections 312 to 316, Ind. Cr. Codes.)

110. *Q.* What provisions are there in the Criminal Law of India to meet the offence of "female infanticide" ?

A. Sections 315 to 318 inclusive were specially introduced to meet the offence of female infanticide. In 1870 Act VIII. of that year was passed to deal with this offence, as it was found that special legislation was necessary for the suppression of the crime of female infanticide.

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* I have known the above riddle asked.

111. *Q.* State the prohibitory provisions in the Penal Code relating to—(1) the exposure and abandonment of children; and (2) the concealment of birth by secret disposal of the dead body of a child.

A. (1) The father or mother of a child under twelve years of age, or person having care of such child, who exposes or leaves such child in any place, with the intention of wholly abandoning it, is guilty of an offence under the I. P. C. The provisions of section 317 do not prevent the offender's trial for murder, or culpable homicide, if the child die in consequence of the exposure. (2) Any one secretly burying, or otherwise disposing of the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, is guilty of an offence. It often happens that the dead body of a new-born infant is found under suspicious circumstances, but it cannot be proved that it was born alive, or murdered. This section deals with such cases. (Sections 317, 318, Ind. Cr. Codes.)

112. *Q.* (1) Define "hurt." (2) Specify the several kinds of "grievous hurt." (3) What is necessary in order to render a person criminally responsible for causing "hurt" or "grievous hurt"? (4) What are the respective punishments for causing "hurt" and "grievous hurt"?

A. (1) Whoever causes bodily pain, disease, or infirmity to any person, is said to cause "hurt." (2) (*a*) Emasculation; (*b*) permanent privation of the sight of either eye; (*c*) permanent privation of the hearing of either ear; (*d*) privation of any member or joint; (*e*) destruction of the powers of any member or joint; (*f*) permanent disfiguration of the head or face; (*g*) fracture or dislocation of a bone or tooth; (*h*) any hurt which endangers life, or causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits. (3) To render a person criminally responsible for causing "hurt," the act must be done with the intention thereby of causing hurt, or with the knowledge that it is likely thereby to cause hurt, and does thereby cause hurt. If the hurt which he intends to cause, or knows himself to be likely to cause, is "grievous hurt," and the person causing it intends, or knows himself likely to cause such hurt, and causes grievous hurt, he is criminally responsible. (4) The punishment for causing hurt, not on provocation, is imprisonment, which may extend to one year, or fine to 1,000 rupees, or both; for "grievous hurt," except on provocation, is imprisonment, which may extend to seven years, and also fine; but fine *alone* is not a legal punishment for grievous hurt. (Sections 319, 320, 321, 322, 323, 325, Ind. Cr. Codes.)

113. *Q.* A, a police officer, tortures Z in order to induce Z to confess that he committed a crime; and B, a zemindar, tortures a ryot in order to compel him to pay his rent. Of what offences are A and B guilty?

A. Both guilty of an offence under section 330, I. P. C.; *viz.*, A of voluntarily causing hurt to extort confession, B of compelling the sufferer to satisfy a demand.

114. *Q.* What is "wrongful restraint"? and define "wrongful confinement."

A. Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to "wrongfully restrain" that person. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, "wrongfully confines" that person. By wrongful restraint is meant the keeping a man out of a place where he wishes to be and has a right to be; wrongful confinement, which is a form of wrongful restraint, is keeping a man within limits out of which he wishes to go and has a right to go. (Sections 339, 340, Ind. Cr. Codes.)

115. *Q.* State circumstances which aggravate the offence of "wrongful confinement," and which are provided for with enhanced punishment under the Code.

A. (1) Wrongful confinement for three or more days, or for ten or more days; (2) of person for whose liberation a writ has been issued; (3) secretly confining a person wrongfully; (4) for the purpose of extorting property, or constraining to an illegal act; (5) for the purpose of extorting confession, or of compelling restoration of property. (Sections 343 to 348, I. P. C.)

116. *Q.* Define "force" and "criminal force." A, a schoolmaster, in the reasonable exercise of his discretion as master, flogs B, one of his scholars. Is A guilty of using *criminal* force?

A. Force.—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion, as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the

motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

First. By his own bodily power.

Secondly. By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part or on the part of any other person.

Thirdly. By inducing any animal to move, to change its motion, or to cease to move.

Criminal Force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

No; because, although A intends to cause fear and annoyance, he does not use force *illegally.* (Sections 349, 350, illustration (*i*), I. P. C.)

117. Define "assault," and state what provision the Code makes for the case of criminal force used in attempt at theft not amounting to robbery.

A. Assault.—Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Section 356, I. P. C., provides a separate punishment for the rare case of "criminal force" used in attempt at theft, and yet not amounting to robbery; *e.g.*, snatching off a nose-ring or earring. (Sections 351 and 356, I. P. C.)

118. *Q.* Explain "kidnapping," and "abduction." How many kinds of kidnapping are mentioned in the Code? Give the different kinds of kidnapping.

A. Kidnapping.—Kidnapping is of two kinds,—kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.—Whoever conveys any person beyond the limits of British India, without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from Lawful Guardianship.—Whoever takes or

entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully intrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. (Sections 359 to 362, I. P. C.)

119. *Q.* In order to sustain a charge of kidnapping or abducting a woman in order that she may be forced or seduced to illicit intercourse, what must be proved?

A. The evidence must show the intent, or raise the presumption that illicit intercourse was likely to result from the abduction. (Ind. Cr. Codes, section 366, and *notes.*)

120. *Q.* A, a procuress, induced a married woman, aged 26, to leave her husband; the wife made her deliberate choice, and of her *own free will* left her husband and became a prostitute in Calcutta. Was A guilty under section 366 or 498, I. P. C.? Give the reason for your answer.

A. Under sec. 498, I. P. C., not under 366, for the woman was not a minor, under any law to which she could possibly be subject, for minor is not defined generally. She was certainly not a minor as contemplated in section 361, I. P. C., for the limit there is 16 for a female, and she went of her own free will. But A was guilty, under the above facts, of enticing away a married woman under section 498, I. P. C. (the husband of the woman or her guardian prosecuting); for whatever the wife's secret inclinations were, she would not have had an opportunity of carrying them out had not the prisoner interposed. (1 W. R. C. C. 45; Ind. Cr. Codes, p. 305.)

121. *Q.* What are the provisions in the Code against "slavery"?

A. There is no definition in the Code of either the word "slave" or "slavery." The Roman lawyer called slavery "a constitution

of the law of nations, by which one is made subject to another, contrary to nature." But this is mistaking the cause for the effect. Grotius describes slavery to be "an obligation to serve another for life in consideration of being supplied with the bare necessaries of life." The subject of slavery is dealt with by the Law Commissioners in note B to the draft of the original Penal Code, page 22 to 25, and in their first report on the Penal Code, page 127 to 129.

Section 367, I. P. C., deals with kidnapping or abducting in order to subject to slavery; section 370, with disposing of a person as a slave; and section 371, habitual dealing in slaves.

122. *Q.* What are the provisions in the Code for the protection of minors from prostitution?

A. It is an offence to let or hire, or otherwise dispose of, any minor under 16 for the purpose of prostitution or any unlawful and immoral purpose. This offence may be committed by parents, guardians, and others having lawful charge or custody of minors. It is further an offence to buy, hire, or otherwise obtain such minor to be used for the purposes above mentioned. (Sections 272, 273, I. P. C.) Act XIV. of 1868 contains provisions for the punishment of unregistered prostitutes and brothel-keepers, &c.

123. *Q.* Is there any provision in the Code making unlawful compulsory labour penal? if so, state the punishment for such an offence.

A. Yes, whoever *unlawfully* compels any person to labour against his will is punishable with imprisonment, which may extend to one year, or with fine, or with both. The word *unlawfully* here used applies both to the person compelled and the means resorted to. (Section 374, Ind. Cr. Codes.)

124. *Q.* When is a man said to commit rape?

A. When he has sexual intercourse with a woman other than his wife—(1) Against her will; while she is in possession of her senses. (2) Without her consent; when drugged or otherwise unable to give consent, as from insanity, an idiot, or otherwise. (3) With her consent, when her consent has been obtained by putting her in fear of death or hurt. (4) With her consent, when he knows he is not her husband, and her consent is given under the belief that he is her husband; and (5) with or without her consent, when she is under ten years of age.

Penetration is sufficient to constitute the offence.

Sexual intercourse by a man with his own wife being under ten years of age, is rape. (Ind. Cr. Codes, section 375, and *notes*.)

125. *Q.* Define "theft." Give illustrations.

A. Sec. 378. *Theft.*—Whoever, intending to take dishonestly

any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

e.g. If A owes money to Z for repairing a watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

126. *Q.* Explain the difference between *theft* and *extortion;* and when are "*theft*" and "*extortion*" "robbery"? and define "dacoity."

A. The difference between "theft" and "extortion" is, that in the former the offender's intention must be to take "without that person's consent," in the latter by *wrongfully obtaining* of a consent. Dishonest intention is common to both. The ingredients of extortion are: (1) Putting a person in fear of injury to himself or another; (2) that such act was intentional; (3) that delivery of property took place; and (4) that this was done dishonestly.

When theft is robbery.—Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death or hurt, or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the

person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint, to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity." (Page 329, Ind. Cr. Codes; sections 390, 391, I. P. C.)

127. *Q.* What is the only case in the Penal Code where *preparation* to commit such offence is punishable? and what is the punishment for such offence of preparation to commit an offence?

A. Preparation to commit an offence is punishable *only* when the preparation is to commit dacoity, the punishment for which is imprisonment for ten years, and also liable to fine. (Section 399, I. P. C.)

128. *Q.* In what does the offence of "*criminal misappropriation of property*" consist? What is the difference between "*criminal misappropriation*" and "*theft*"?

A. This offence consists, not in wrongfully obtaining possession, but in the misappropriation, either permanently or for a time, of property which is already without wrong in the possession of the offender. The dishonest intention to appropriate the property of another is common to theft and criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must, in the other offence, be carried into action by an actual misappropriation or conversion. Conversion means the wrongful appropriation of the goods of another. (Ind. Cr. Codes, p. 343; W. L. L. p. 236.)

129. *Q.* State the difference between "*theft*" and "*criminal breach of trust.*"

A. "Criminal breach of trust," like criminal misappropriation, is the dishonestly misappropriating of property. The difference between theft and criminal breach of trust is, that in the former there is a wrongful taking or moving, whereas in the latter the property has

been received on your behalf, and instead of being delivered into your possession, is dishonestly misappropriated to the offender's own use. Likewise, between criminal misappropriation and criminal breach of trust; in the latter case the offender is lawfully intrusted with the property, and the offender dishonestly misappropriates the same, or wilfully suffers any other person to do so. (Ind. Cr. Codes, p. 347.)

130. *Q.* Define "stolen property." What is necessary to make a man criminally responsible for "receiving" stolen property?

A. Stolen property.—Property, the possession of which has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

To make a man criminally responsible, he must have dishonestly received or retained such property, knowing, or having reason to believe, the same to be stolen. The essence of this offence consists in the receipt, with a full knowledge at the time of receipt, that the property was fraudulently obtained. What the receiver's object may be in receiving the property, provided he knows that it was unlawfully obtained, is perfectly immaterial. (Sections 410, 411, I. P. C.)

131. *Q.* Define "cheating," and "cheating by personation."

A. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do, or omit to do, anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Cheating by personation.—A person is said to "cheat by personation," if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed, whether the individual personated is a real or imaginary person; *e.g.*:—

A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

A cheats by pretending to be B, a person who is deceased. A cheats by personation. (Sections 415, 416, I. P. C.)

132. *Q.* Explain the difference between "*cheating*" and "*extortion.*"

A. Both these offences are committed by the wrongful obtaining of a consent. The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception. (Ind. Cr. Codes, p. 365.)

133. *Q.* Define "mischief."

A. Mischief.—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly. (Section 425, I. P. C.)

134. *Q.* Is there any provision in the Penal Code which supplies a punishment for the offence of removing boundary-marks?

A. Yes. Whoever commits mischief by destroying or moving any landmark, fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, is liable to imprisonment, which may extend to one year, or with fine, or with both. (Section 434, I. P. C.)

135. *Q.* Define "criminal trespass," and give the several degrees of the offence.

A. Whoever enters into or upon property in the possession of another, with intent to commit an offence, or to intimidate, insult, or annoy any person in possession, or, having lawfully entered, unlawfully remains there with such above-mentioned intent, is said to commit "criminal trespass."

(1) House-trespass; (2) lurking house-trespass; (3) lurking house-trespass by night; (4) housebreaking; (5) housebreaking by night. (Sections 441 to 446, I. P. C.)

136. *Q.* State when "house-trespass" amounts to

"housebreaking." And when is a person guilty of "housebreaking by night"?

A. A person is said to commit "housebreaking" who commits house-trespass, if he effects his entrance into the house, or any part of it, in any of the six ways hereinafter described; or if, being in the house, or any part of it, for the purpose of committing an offence, or having committed an offence therein, he quits the house, or any part of it, in any of such six ways; that is to say:—

First. If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly. If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. If he effects his entrance or departure by using criminal force, or committing an assault, or by threatening any person with assault.

Sixthly. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Housebreaking by night.—Whoever commits housebreaking after sunset, and before sunrise, is said to commit "housebreaking by night.' (Sections 445, 446, I. P. C.)

137. *Q.* Under what circumstances, and for what purpose, is a "boat or vessel" classed as a "house"? And by being so classed, does it cease to be movable property?

A. When they are used as a human dwelling, or as a place of custody of property. No; such boat does not cease to be movable property under section 378, I. P. C. (Ind. Cr. Codes, section 442.)

138. *Q.* A, a bearer, dishonestly opens his master's cheroot-box in his, A's, keeping, or he does so

with the intention of committing mischief; of what offence is A guilty?

A. He is guilty of dishonestly, or with intent to commit mischief, breaking open or unfastening a closed receptacle containing property, without having authority to open the same. (Section 462, I. P. C.)

139. *Q.* When is a person said to commit "forgery" and to "make a false document"? And what is "forged document"?

A. Forgery.—Whoever makes any false document, or part of a document, with intent to cause damage or injury to the public, or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Sec. 464. *Making a false document.*—A person is said to make a false document—

First. Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document, or part of a document, was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or,

Secondly. Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed, either by himself or by any other person, whether such person be living or dead at the time of such alteration; or,

Thirdly. Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

A false document, made wholly or in part by forgery, is designated "a forged document." (Sections 463, 464, 470, I. P. C.)

140. *Q.* What punishment does the Code provide for "fraudulently using as genuine a forged document"?

A. The same as that of forging such document. (Section 471, I. P. C.)

141. *Q.* Define "trade-mark" and "property-mark."

A. Trade-mark.—A mark used for denoting that goods have been

made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called a trade-mark.

Property-mark.—A mark used for denoting that movable property belongs to a particular person is called a property-mark. (Sections 478, 479, I. P. C.)

142. *Q.* What is the nature of the contracts for the breaches of which the Penal Code provides? Give briefly the law on this subject of "criminal breach of contract of service."

A. In India there are two Acts that provide criminally for the punishment of servants committing a breach of their contract of service,—Act XIII. 1859, and chap. xix. Penal Code. The nature of the contracts here punishable are, criminal breach of contracts of service; breaches of contract likely to cause evil, such as no damages, or only very high damages, could repair; breaches likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. (Ind. Cr. Codes, pages 422 to 431.)

143. *Q.* What are the provisions of the Code making penal the offences of "bigamy" and "adultery"?

A. Bigamy.—Whoever, having a husband or wife living, *marries* in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts, so far as the same are within his or her knowledge.

N.B.—*Marries*, that is, "goes through the form and ceremony of marriage with another person." See R. *v.* Allen, in the Court for the Consideration of Crown Cases Reserved, argued before sixteen judges.

Adultery.—Whoever has sexual intercourse with a person who is, and whom he knows, or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual

intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor. (Sections 494, 497, Ind. Cr. Codes.)

144. *Q.* Define "defamation."

A. Defamation.—Whoever, by words, either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing, or having reason to believe, that such imputation will harm the reputation of such person, is said, except in the cases hereafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of the family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

See also the nine *exceptions* to the rule.

The essence of this offence consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. (Section 499, notes, Ind. Cr. Codes.)

145. *Q.* Illustrate "criminal intimidation."

A. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which that person is not legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section; *e. g.*:—

A, for the purpose of inducing B to desist from prosecuting a

civil suit, threatens to burn B's house. A is guilty of criminal intimidation. (Section 503, I. P. C.)

146. *Q.* What is the difference between section 510, I. P. C., and section 34, clause 6, Act V. of 1861? And what are the punishments severally under the above enactments?

A. By section 510, the offender *must* cause annoyance, whereas by section 34, clause 6, Act V. of 1861, any person who is found drunk or riotous, or who is incapable of taking care of himself, is punishable. Under the Penal Code, the punishment is simple imprisonment for twenty-four hours, or ten rupees fine, or both; under Act V., imprisonment for eight days, or fine up to fifty rupees: cannot give both fine and imprisonment. (Ind. Cr. Codes, 510.)

CHAPTER V.

CODE OF CIVIL PROCEDURE.

1. *Q.* To what extent does the Indian Code of Civil Procedure regulate the jurisdiction of the courts? Does it in this respect differ from the Code of Criminal Procedure?

A. The Code of Civil Procedure regulates the procedure in *all* civil suits in the country. In 1862 it was extended to the Courts in the Presidency towns; so that the proceedings in civil suits between party and party in the High Courts are regulated by the Code of Civil Procedure.

The Code of Criminal Procedure differs in this respect, that it does not guide the procedure of Courts established by Royal Charter. It relates *only* to the procedure of the Courts of Criminal Judicature other than the Courts established by Royal Charter. (Section 1, Code of Cr. Procedure, and sec. 37, 24 & 25 Vict. c. 104.)

2. *Q.* Under what circumstances will a previous decision on the same cause of action bar a Civil Court's jurisdiction?

A. "*Nemo debet bis vexari pro una et eadem causa*," which has been heard and determined by a Court of competent jurisdiction, in a former suit between the same parties, or between parties under whom they claim. In order that a suit may be barred, three things must concur:—(1) The cause of action must be the same; (2) in the former case, the point must have been decided by a Court of competent jurisdiction; (3) the parties to both suits must be the same, either actually or by representation. (Bro. C. P. C. 30—40.)

3. *Q.* What are the limitations as to the jurisdiction of Civil Courts?

A. (1) In case of suits for land or other immovable property, it must be situate within the Court's local jurisdiction. (2) The Court has jurisdiction, if the cause of action has arisen within its limits. (3) The action may be brought in the Court within the limits of whose

jurisdiction the defendant, at the commencement of the suit, shall "dwell;" and (4), if the defendant, at the time of the commencement of the suit, personally works for gain within the limits of the Court's jurisdiction. (Bro. C. P. C. 40—50.)

4. *Q.* How does the Civil Code prevent multiplicity of action? or, in other words, what causes of action may be joined in the same suit?

A. Every suit must include the whole of the claim arising out of the cause of action—all the grounds which then existed upon which his suit is based. The cause of action cannot be split up. It is optional with the plaintiff to relinquish any part of his claim, in order to bring the suit within the jurisdiction of any Court. The portion omitted or relinquished cannot be afterwards entertained. Causes of action by and against the same parties, and cognizable by the same Court, may be joined, provided the entire claim does not exceed the jurisdiction of the Court. "Cognizable by the same Court," refers to the *nature* of the suit, not its *value*. (Bro. C. P. C. 52—58.)

5. *Q.* In what Court may an action be brought for immovable property which is situate within different jurisdictions of the same district?

A. In the Court within the jurisdiction of which any portion of such immovable property is situate, provided the entire claim be cognizable by such Court. The Court in which the suit is brought must apply to the District Court for authority to proceed with it. (Section 11, Act VIII. 1859.)

6. *Q.* In suing for a "declaratory decree," on what grounds must the claimant's suit be based?

A. On an *existing* right: a mere contingent right is not sufficient to ground an action on. (Bro. C.P.C. 61.) (1) No declaratory decree can be made in favour of a plaintiff who is not also entitled to consequential relief, had he asked for it. (Sheik Torab Ali *v.* Sheik Mahomed Tukee.) (2) The making a declaratory decree is discretionary with the Court applied to to make it. (Sree Narain Mitho *v.* Sree Mutty Kishen Soondory.)

7. *Q.* Who are the recognized agents of parties by whom applications and appearances may be made to or in Civil Courts?

A. (1) Persons holding power of attorney from absent persons; (2) persons carrying on trade or business for absent persons; (3) persons being *ex officio* or otherwise authorized to act for Government in respect of any suit or judicial proceeding; (4) persons

especially appointed to prosecute a suit for any sovereign prince. (Section 17, Act VIII. 1859.) By Act XX. of 1865, section 40, any suitor may appear, plead, and act in any suit, appeal, or other proceeding on behalf of any co-suitor.

8. *Q.* Who are exempted from personal appearance in Court?

A. Women, who, according to the customs and manners of the country, ought not to be compelled to appear in public; and Government may, at its discretion, exempt persons of rank entitled to the privilege of exemption. (Sections 21, 22, Act VIII. 1859.)

9. *Q.* Who is to pay the costs of serving processes under the Code? and where and when is the amount to be paid?

A. The process is to be served at the expense of the party at whose instance it is issued. The sum required to defray such costs must be paid into the court before the process is issued, within a period to be fixed by the Court issuing the process. (Section 2, Act XXIII. of 1861.)

10. *Q.* What is "*tullubana*"? and how is it paid?

A. The money collected for the purpose of service of process is called "tullubana." It is paid into court in *cash*.

11. *Q.* What is the punishment for false verification of a plaint?

A. The punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence. Sections 193 to 201, Indian Penal Code, is the law in force at present for the punishment of giving or fabricating false evidence. (Section 24, Act VIII. 1859.)

12. *Q.* How are suits in civil actions commenced?

A. By a plaint presented to the Court by the plaintiff in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf. A plaint cannot be presented on a holiday, and it ought to be written in the language of the district. (Bro. C.P.C. 25.)

13. *Q.* When is a plaintiff required to furnish security for costs?

A. At the time of presenting the plaint, when he is ordinarily residing out of British India, and is not in possession of any land or other immovable property within those territories, independent of the property in suit. (Section 34, Act VIII. 1859.)

14. *Q.* How must the summons be served when the defendant is resident within the jurisdiction of another Court, and has no agent to accept service?

A. The summons is to be transmitted either by an officer of the Court, or by post, to any Court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served. The Court to which the summons is transmitted shall have it served in due manner, and, upon its return, shall retransmit it to the Court from whence it originally issued. (Section 59, Act VIII. 1859.)

15. *Q.* In what cases may a letter be substituted for a summons?

A. When the person whose appearance is required is of a rank which entitles him to such mark of consideration. (Section 64, Act VIII. 1859.)

16. *Q.* What particulars must a plaint contain?

A. (1) The name, description, and place of abode of plaintiff; (2) name, description, and place of abode of the defendant, so far as they can be ascertained; (3) the relief sought for, the subject of the claim, the cause of action and when it accrued, and, if necessary, the ground of exemption from any law of limitation; (4) when the claim is for any property other than money, its estimated value; (5) when for land, or for any interest in land, the nature of the tenure or interest must be specified; if for land forming part of a village, or for a house, garden, or the like, its situation must be described, by setting forth of boundaries, or in some manner sufficient for its identification. (Section 26, Act VIII. 1859.)

17. *Q.* When *may* a plaint be rejected? and what are the consequences of rejection?

A. (1) If it does not contain the several particulars mentioned in answer to Question 16; or (2) if it contain particulars other than those required to be specified, whether relevant to suit or not; (3) or if it be unnecessarily prolix; (4) or if it be not subscribed and verified as required; (5) if the claim is improperly valued, or written on insufficiently stamped paper, and the plaintiff refuses to correct such improper valuation, or supply additional stamp; (6) if it appear to the Court that the plaintiff has no cause of action, or that his right is barred by limitation. (Sections 29, 31, 32, Act VIII. 1859.)

18. *Q.* Is there any appeal from an order rejecting a plaint?

A. Yes, if rejected under any of the sections 29, 31, 32, mentioned in the last preceding answer. (Section 36, Act VIII. 1859.)

19. *Q.* What is the law as to the production of documents at the time of presenting the plaint?

A. When the plaintiff sues or relies upon any written document in support of his claim, he must produce the same in Court when the plaint is presented; and at the same time deliver a copy to be filed with the plaint; if such document is an entry in a book, the plaintiff must produce the book to the Court, together with a copy of the entry. The plaintiff may, if he likes, deliver the original to be filed, instead of the copy. The summons to the defendant shall order him to produce any written document in his possession or power, of which the plaintiff demands inspection. Section 128 enjoins the production by either side of documents to be used at the actual hearing of the suit. This evidently refers to documents not filed under section 39 with the plaint. The sections which govern the compulsory production of a list of documents, or the documents themselves, are 40, 43, 107, 149, 152, and 153.)

20. *Q.* When is the summons to defendant to issue? and what particulars is it to contain?

A. A summons is to be issued, under the signature of the Judge and the seal of the Court, on the plaint being registered. The summons shall contain a direction as to whether it is for the settlement of the issues only, or for the final disposal of the suit. The summons shall order production of documents required by plaintiff or relied on by defendant, and it must specify the day for defendant's appearance in person or by pleader. (Sections 41, 43, Act VIII. 1859.)

21. *Q.* What points are to be taken into consideration in fixing the day for the appearance of the defendant?

A. With reference to the place of residence of the defendant, and time necessary for the service of the summons, and so fixed as to allow him a sufficient time to enable him to appear and answer in person or by pleader. (Section 45, Act VIII. 1859.)

22. *Q.* How is service of summons to be effected on the defendant? and how when there are several defendants? How on Government servants, officers, and soldiers?

A. The *Nazir* is the officer responsible for the service of the summons, as a rule; it is to be delivered to him for service. The service should be on defendant in person, if practicable, unless he have an agent empowered to accept service. When there are more defend-

ants than one, service must be made on each defendant. Service is made by delivering or tendering a copy of the summons, under the signature of the Judge and seal of the Court. If defendant cannot be found, and has no agent, service may be made on any adult male member of his family residing with him. The defendant or person served must indorse the summons. If summons cannot be served, a copy must be fixed to the door of the dwelling-house. When the defendant is in Government service, the Court may transmit a copy of the summons to the head of defendant's office. If defendant is an officer or soldier, the Court *shall* transmit a copy to the commanding officer of the defendant's corps, to be served on the defendant. Where an officer has no regiment, as is a frequent occurrence under the present state of things in India (*e.g.*, doing duty officers on regimental cadres), and there is no commanding officer in consequence, the service must be effected in the ordinary way. (Bro. C. P. C. 90 to 95.)

23. *Q.* How may persons not parties to the suit be brought before the Court?

A. By adjourning the hearing to a future day, and issuing a notice to such persons. This procedure is discretionary with the Court. (Section 73, Act VIII. 1859.)

24. *Q.* In what cases may the defendant be arrested before judgment?

A. (1) To show cause why he should not give security for his appearance; or (2) in default of his giving such security, the Court may issue a warrant ordering the defendant to be brought before the Court. (Sections 75, 78, 80, Act VIII. 1859.)

25. *Q.* In what cases may a plaintiff apply that security may be taken from the defendant for the performance of a decree?

A. If with intent to obstruct or delay the execution of *any* decree passed against him, the defendant is about to dispose of his property, or remove it from the jurisdiction. *Any decree, i.e.* a decree in some specific suit. (Section 81, Act VIII. 1859.)

26. *Q.* How is the application (for security) to be made?

A. The application must contain—(1) a specification of the property required to be attached; (2) the estimated value of each article or item; and (3) at the time of making the application the plaintiff must declare that defendant is about to dispose of, or remove, his property with intent to obstruct or delay execution of decree. (Sec. 82, Act VIII. 1859.)

27. *Q.* Under what circumstances, and with what procedure, may the defendant in a civil suit be arrested before judgment?

A. In suits for movable property, when the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay execution of any decree against him, is about to leave the jurisdiction of the Court, or has disposed of or removed his property from the Court's jurisdiction, or any part of such property. The plaintiff's application for security to be taken, must be founded on strong evidence, and may be made either at the institution of the suit or at any time thereafter until final judgment. The Court, after due investigation, may issue a warrant to bring up defendant to show cause why he should not give bail. If defendant fail to show cause, Court may order him to give bail. He may deposit money or other valuables sufficient to answer claim with costs, in lieu of bail. If he cannot either give security or a sufficient deposit, he may be committed to custody until the decision of the suit, or until execution of decree. If the defendant is arrested on insufficient grounds, the Court can award him compensation, not exceeding one thousand rupees, for any injury or loss sustained by him. (Sections 74 to 80, Act VIII. 1859.)

28. *Q.* Mention a special case in which a party may be put in immediate possession of land which may be subject of a suit.

A. Whenever lands paying revenue to Government, or a tenure liable to summary sale under Regulation VIII. of 1819, B. C., forms the subject of a suit. In such a case, if public sale be ordered for non-payment of rent, the party not in possession, upon payment of the amount due, previously to the sale, may be put in immediate possession of lands or tenure. (Section 91, Act VIII. 1859.)

29. *Q.* In what cases will an injunction be granted?

A. (1) Where the property in dispute in the suit is in danger of being wasted, damaged, or alienated; (2) where a suit has been commenced for any breach of contract or other injury. (Sections 92, 93, Act VIII. 1859.)

30. *Q.* What are the provisions of the Code with respect to "injunctions" and "receivers"?

A. In the cases mentioned in the last preceding question the Court may, for the preservation or better management or custody of any such property, appoint a receiver or manager, and grant to him such powers as to management, improvement, and collection of the rents and profits, as to it may seem proper. In lands paying revenue

to Government the Court may appoint the collector, receiver, and manager. (Section 92, Act VIII. 1859.)

31. *Q.* How is the Court to proceed in the case of the death of one of several plaintiffs, where the cause of action accrues to the survivor, and the representative of the deceased?

A. The name of the representative can be entered on the register, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such legal representatives. If no application is made to the Court by the legal representative of the deceased, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and the legal representative of the deceased is bound by the judgment given in the suit. (Section 101, Act VIII. 1859.)

32. *Q.* What will be the effect upon the suit of the death, marriage, bankruptcy, or insolvency of either party to the suit?

A. (1) The death of a plaintiff or defendant shall not cause the suit to abate, if the cause of action survive. (2) The suit, notwithstanding the marriage of a female plaintiff or defendant, may be proceeded with to judgment, and the decree executed upon the wife alone; if the husband is by law liable for his wife's debts, the decree may, with the permission of the Court, be executed against the husband. (3) The bankruptcy or insolvency of the plaintiff in any suit which the assignee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignee decline to continue the suit, and to give security for costs. Within eight days of his neglecting or refusing, the defendant may plead bankruptcy or insolvency of the plaintiff as a reason for abating the suit. (Sections 99 to 106. Act VIII. 1859.)

33. *Q.* What is the procedure laid down by the Code as to the appearance of parties? and what the consequence of non-appearance—(1) if, on day fixed, neither party appear? or (2) if plaintiff only appear? or (3) if defendant only appear?

A. (1) If neither party appear, the suit may be dismissed, with liberty to the plaintiff to bring a fresh suit. (2) If plaintiff only appear, and due service of summons be proved, the Court may proceed to hear the suit; if due service of summons be not proved, the Court may issue order, or second summons; if service of summons be proved, but the service was not in due time, the Court may adjourn hearing, and direct notice to be given to defendant. (3) If defendant only appear, the Court must pass judgment by default

against plaintiff, unless defendant admit claim. No fresh suit after such judgment. (Sections 110 to 114, Act VIII. 1859.)

34. *Q.* Describe the rules provided by the Code for setting aside a judgment passed *ex parte*.

A. In all such cases the defendant may apply within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which judgment was passed, to set aside the judgment. If proved that the summons was not duly served, or the defendant was prevented from appearing by any sufficient cause, the Court shall set aside its judgment, and appoint a day for proceeding with the suit. Ditto in the case of judgment against a plaintiff by default. No judgment to be set aside without notice to opposite party. (Section 119, Act VIII. 1859.)

35. *Q.* How are written statements to be framed? and on what grounds may the Court reject a written statement?

A. They are to be as brief as the nature of the case will admit; not argumentative, nor by way of answer one to the other; each to be a simple narrative of facts material to the case which the party believes himself able to prove. They must be subscribed and verified similarly as plaints. The Court may reject a written statement, if it is argumentative, prolix, or irrelevant. (Sections 123, 124, Act VIII. 1859.)

36. *Q.* How is the examination of the parties to be recorded? and what is the consequence of refusal of a party to answer material questions?

A. The examination must be oral, and (unless the pleader be the person examined) upon oath or affirmation, or otherwise, according to the law for the time being in force in relation to the examination of witnesses. The substance of the examination to be reduced to writing, and form part of the record.

If he refuse to answer without lawful excuse, the Court may pass judgment against him, or make such other order in relation to the suit as it deems proper. The *materiality* of the question is essential. (Bro. C. P. C. sections 125, 126.)

37. *Q.* What are the rules as to the production, admission, and rejection of exhibits at the first hearing of the suit?

A. The parties are required to have all their documentary evidence of every description with them at the first hearing of the suit. All exhibits produced by them shall be received and inspected by the Court. It is competent to the Court, after inspection, to reject

any exhibit. When an exhibit is admitted in evidence, it must be indorsed—(1) with the number and title of the suit, (2) the name of the party producing it, (3) the date on which it was produced, and (4) it shall be filed as part of the record. Rejected exhibits are to be similarly indorsed, with the addition of the word "rejected." The exhibit shall then be returned to the party who produced it. (Sections 128, 129, 132, 134, Act VIII. 1859.) For an exhibit received and admitted in evidence, when returned, a receipt shall be given by the party receiving it in a receipt-book kept for the purpose. (Sec. 137, *id.*)

38. *Q.* Describe the mode of settling issues in a civil suit, and the powers with which the Court is invested for this purpose.

A. An issue is where both parties join upon somewhat that they refer unto a trial to make an end of the suit. At the first hearing of the suit, the Court must ascertain upon what questions of law or fact the parties are at issue, and thereupon proceed to frame and record the issues of law and fact. The issues are to be framed from all questions of law or fact upon which the parties may be at issue, and are to be collected not merely from the plaint, not merely from the written statement, but may also be taken from the oral statements of their pleaders. The Court has the power to examine witnesses or documents, to adjourn the proceedings before framing the issues, and at any time before the decision of the case the Court may amend the issues, or frame additional issues, on such terms as to it shall seem fit. (Section 139 to 141, Act VIII. 1859.)

39. *Q.* Is there any provision in the Code by which questions of law and fact can be stated by the parties in the form of an issue?

A. Yes. When the parties to a suit are agreed as to the question of fact or law to be decided between them, they may state the same in the form of an issue. The Court, if satisfied that the agreement entered into in writing was executed in writing, it may record and try the issue, and decree accordingly. (Sections 142, 143, Act VIII. 1859.)

40. *Q.* When may the suit be disposed of at the first hearing? and what provisions are there in the Code for the adjournment of a suit?

A. If it appears that the parties are not at issue on any question of law or fact, judgment may be given at once. If the parties are at issue, and issues have been framed, and no further argument or evidence than can at once be supplied is required, the Court, if satisfied, may determine the issues and give judgment.

The Court has power, if sufficient cause be shown, at any stage of

the suit, to grant time, or to adjourn the suit to a future fixed day. (Sections 144, 146, Act VIII. 1859.)

41. *Q.* How are witnesses to be brought before the Court?

A. By summons. The first application for the summons of a witness to attend to give evidence, or produce a document, is exempt from payment of any Court fee. Expenses of witness to be paid by applicant before issue of summons. (Sections 149, 151, Act VIII. 1859; section 19, clause 14, Act VII. 1870.)

42. *Q.* What particulars must the summons contain?

A. The time and place at which he is required to attend, and the purpose for which his attendance is required. (Section 152, Act VIII. 1859.)

43. *Q.* Is the personal attendance of a witness necessary when he has been summoned to produce a document only?

A. No; it is sufficient if he cause such document to be produced. (Section 153, Act VIII. 1859.)

44. *Q.* How and when must the summons be served?

A. How—by exhibiting the original, and delivering or tendering a copy. *When*—time enough to allow a witness for preparation and travelling to the place of attendance. (Section 154, Act VIII. 1859.)

45. *Q.* What must be done when the summons cannot be served?

A. When witness cannot be found, the service may be made on any adult male member of his family residing with him. When it cannot be served at all, it is to be returned to the Court, with an endorsement thereon that the serving officer was unable to serve it. (Section 156, Act VIII. 1859.)

46. *Q.* How is the summons to be served when the witness resides in another district?

A. The summons shall be transmitted by the Court in which the suit is pending to any Court having jurisdiction where the witness resides, by which it can be conveniently served. The latter Court shall have it served, and re-transmit it to the Court from whence it originally issued. (Section 158, Act VIII. 1859.)

47. *Q.* When the witness absconds or keeps out of

the way of service, and it is desired to attach his property, what steps should be taken?

A. The Court may cause a proclamation requiring his attendance at a fixed time and place named therein, and may, at the instance of the applicant, make an order for the attachment of the movables and immovables of such person. (Section 159, Act VIII. 1859.)

48. *Q.* How is the Court to proceed with the witness on his appearance?

A. If he satisfy the Court that he was not keeping out of the way to avoid service of summons, and had no notice of the proclamation in time to attend, the Court shall release the property from attachment, making any order it thinks fit in regard to costs of the attachment. If he does not appear, or fails to satisfy the Court on the above points, the Court can order sale of attached property to satisfy the costs of attachment, together with any fine which the Court may lawfully impose as punishment for the witness absconding or keeping out of the way to avoid summons. (Section 160, Act VIII. 1859.)

49. *Q.* Give the rules of the Code regarding the examination of the witnesses in court, and the recording of their evidence.

A. The witness is to be examined at the hearing of the suit in open court, orally, in the presence and hearing and under the personal direction and superintendence of the Judge. In appealable cases, his evidence shall be taken down in writing, in the language in ordinary use in proceedings before the Court, in the form of a narrative; it shall be read over to the witness, and, if necessary, be corrected, and must be signed by the Judge. When taken down in a different language from that in which it was given, the witness may require it to be interpreted to him. The Court must record such remarks as it thinks material respecting the demeanour of the witness. Where the evidence is not taken down in writing by the Judge himself, he must make a memorandum of the substance. In non-appealable cases, the depositions need not be at length, but in the form of a memorandum of the substance, written and signed by the Judge. (Section 172, Act VIII. 1859.)

50. *Q.* How would you compel the adversary to produce a document not already filed by him? What consequences attach to non-production after notice served?

A. By delivering to the Court two notices in writing to the party in whose possession or power the document is, calling on him to

produce the same. If he fail to comply with the Court's order, the Court may either pass judgment against him, or make such other order in relation to the suit as it deems proper in the circumstances of the case. (Sections 40, 43, 170, Act VIII. 1859.)

51. *Q.* In what cases can a Court issue a commission to examine witnesses?

A. (1) When the evidence of a witness is required who is residing more than one hundred miles from where the Court is held; (2) or who is unable from sickness or infirmity; (3) or is a person exempted by reason of rank or sex from personal appearance in court. (Section 175, Act VIII. 1859.)

52. *Q.* In what language must the judgment be written? and state the proviso, if there be any.

A. In the vernacular language of the Judge. The proviso is, if the vernacular language of the Judge be not English, and the Judge is able to write a clear and intelligible decision in English, and prefers to do so, the judgment may be written in English. The rule is different as regards the High Courts of Bengal, Madras, Bombay, and N. W. P. (See Act XX. 1862, sec. 5; Act XXIV. 1866, sec. 18.)

53. *Q.* What should the judgment contain?

A. (1) The point or points for determination; (2) the decision thereon on each issue separately; (3) the reasons for the decision; (4) and shall be dated and signed by the Judge in open court *at the time of pronouncing it;* (5) when the judgment is written in any other language than that in ordinary use in the court, it must be translated, and the translation signed by the Judge; (6) it must direct by whom costs are to be paid. (Sections 185 to 187, Act VIII. 1859.)

54. *Q.* What is included under the denomination of costs?

A. The whole of the expenses necessarily incurred by either party on account of the suit and the enforcing the decree; *e.g.*, stamps; summoning the defendant and witnesses, and of other processes; procuring copies of documents; fees of pleaders; charges of witnesses, and expenses of local investigations, or investigations into accounts; every process served or executed under chapter iv. of the Court Fees Act. (Section 188, Bro. C. P. C.)

55. *Q.* What is the decree to contain?

A. (1) The date on which it is passed; (2) the number of suit; (3) names and descriptions of the parties; (4) particulars of the claim; (5) clearly specify the relief granted, or other determination

of the suit; (6) the amount of costs, by whom, and in what proportions to be paid; and (7) signed by the Judge and sealed with the seal of the Court. (Section 189, Act VIII. 1859.)

56. *Q.* How are decrees of the following kinds enforced: (1) For the specific performance of a contract? (2) for money?

A. (1) If defendant is able to perform the contract, the Court, with consent of plaintiff, may decree specific performance within a fixed time, and shall award an amount of damages to be paid as an alternative if the contract is not performed. (2) In suits for money, the Court may, in decree, order interest to be paid on principal sum adjudged from date of suit to date of decree, in addition to any interest adjudged on such principal sum for any period prior to the date of the suit, with further interest on the aggregate sum so adjudged, and on the costs of the suit from date of decree to date of payment. (Section 10, Act XXIII. 1861.)

57. *Q.* How is execution enforced when the decree is for—(1) land, (2) money?

A. (1) The land shall be delivered over to the party to whom it is adjudged. (2) If for money, it shall be enforced by the imprisonment of the party against whom decree is made, or by attachment and sale of his property, or by both. A decree against a security may be enforced in the same manner. (Sections 199, 201, Act VIII. 1859.)

58. *Q.* How is a decree to be executed against representatives of deceased persons?

A. If for money, by the attachment and sale of any property of the deceased; if no such property can be found, and defendant cannot satisfy the Court that he has duly applied deceased's property so coming into his possession, the decree may be executed against the defendant to the extent of the misapplied property, in the same manner as if the decree had been against him personally. (Section 203, Act VIII. 1859.)

59. *Q.* What is the form of application for execution of a decree?

A. The application must be in writing, and contain, in a tabular form, the following particulars; viz.—(1) Number of suit; (2) names of the parties; (3) date of the decree; (4) whether any appeal, and what adjustment of the matter in dispute has been made subsequent to decree; (5) amount of debt, damages, or other relief granted; (6) amount of costs; (7) name of defendant; (8) the mode in which assistance of the Court is required; (9) when of immovables, it must contain a list and description of property to be attached; (10)

when of movables, it may be general, or may be accompanied with inventory of property to be attached. (Sections 212 to 214, Act VIII. 1859.)

60. *Q.* In the execution of decrees for immovable property, if the decree be for the division of an estate, or separation of an undivided estate, paying revenue to Government, how is the division or separation to be made?

A. Made by the Collector, under the orders of the Court, according to the rules in force for the partition of an estate paying revenue to Government. (Section 225, Act VIII. 1859.)

61. *Q.* A purchased B's rights at a sale in execution of a decree, but found the lands in possession of C, a purchaser at a sale by the Collector's Court. How must A proceed?

A. Establish his right by a regular suit: he cannot proceed summarily. (Bro. C. P. C. section 227, and *note.*)

62. *Q.* What is the procedure to be observed when the person to be dispossessed of immovable property under a decree, disputes the right of the decree-holder to be put in possession of such property?

A. He may apply within one month from dispossession, if he be a person other than the defendant; and if, after examining him, the Court thinks there is probable cause for the application, it shall be numbered and registered as a suit between applicant as plaintiff and decree-holder as defendant, and the matter investigated as a suit for the property. (Section 230, Act VIII. 1859.)

63. *Q.* Does an appeal lie against a refusal of the Court to entertain such an application? (Question 61.)

A. No. The remedy is by a regular suit; but if the case be admitted and investigated, there would be an appeal under section 231, from its decision. (Bro. C.P.C. section 230, and *note.*)

64. *Q.* If a decree be for money, how is it to be executed?

A. See answer to *Question* 56, *antè*. Of the execution of such a decree by attachment of property, *see* sections 232 to 247. Sales in execution must be conducted by an officer of the Court, or a person appointed by the Court, and shall, in all cases, be made by public auction. (Section 248, Act VIII. 1859.)

65. *Q.* How are claims or objections to sale of attached property to be investigated?

A. As if claimant had been originally made a defendant to the suit; and if the Court thinks that the property was not in the possession of the party against whom execution is sought, or some person in trust for him, or in the occupancy of ryots paying rent to him, or that, being in the possession of the party himself, it was so on account of, or in trust for, some one else, the Court shall order release of the property from attachment; otherwise the Court shall disallow the claim, provided that no such investigation shall be made if it appear that the making of the claim or objection was delayed with the view to obstruct the ends of justice. (Sections 246, 247, Act VIII. 1859.)

66. *Q.* In sales in execution of decrees, at what time is the full amount of purchase-money to be made good?

A. Before sunset of the fifteenth day from that on which the sale of the property took place; or, if the fifteenth day be a Sunday or a holiday, then on the first office day after the fifteenth day. (Section 254, Act VIII. 1859.)

67. *Q.* In sales of immovable property in execution of decrees, what are the rules of the Code respecting —(1) payment of purchase-money? (2) re-sales? (3) certificates to purchaser?

A. (1) When a sale is set aside, the purchaser is entitled to receive back his purchase-money with or without interest. After sale has become absolute, a certificate is to be granted to the purchaser of land, and such certificate is to be deemed a valid transfer of right, title, and interest purchased. (2) In default of payment within fifteen days, the deposit, after defraying expenses of sale, shall be forfeited to Government, and the property re-sold, the defaulting purchaser being answerable for loss by re-sale. In default of payment of purchase-money, a re-sale shall be made after the issue of the required notification. (3) The certificate to state the name of the *actual* purchaser. (Sections 254, 255, 258, 259, 260, Act VIII. 1859.)

68. *Q.* On what grounds may an arrested person apply for his discharge?

A. He may, on being brought before the Court, apply on the ground that he has no present means of paying the debt, or that he is willing to place all his property at the disposal of the Court. (Section 273, Act VIII. 1859.)

69. *Q.* How is the subsistence-money of a defendant

in gaol to be fixed and furnished? and what are the powers of the Court as to varying the subsistence-allowance?

A. The Court to fix such monthly allowance as it thinks sufficient, not exceeding four annas a day, which shall be supplied by the party at whose instance the decree may have been executed, by monthly payments in advance. The Court may vary the allowance to a sum not exceeding six annas a day in case of illness or other special cause. (Sections 276, 277, Act VIII. 1859.)

70. *Q.* How may a decree of one Court be executed within the jurisdiction of another Court? and how is an execution to be enforced by a Court to which application has been made to execute the decree of another?

A. The Court which passed the decree must transmit a copy of it to the Court within whose jurisdiction it is desired to have it executed, with a certificate that it has not been executed; such copy, when filed in the latter Court, has the same force as a decree of such Court. Such other Court proceeds, on plaintiff's application, to execute the same according to its own rules. (Sections 284 to 288, Act VIII. 1859.)

71. *Q.* How is a warrant of arrest or other process in execution of decrees to be enforced in military cantonments?

A. It is taken to the commanding or senior officer present, who signs it, and causes the person named to be arrested. (Section 295, Act VIII. 1859.)

72. *Q.* What are the rules as to suits "*in formâ pauperis*"?

A. No suit to be brought for the recovery of any sum of money, on account of damages for loss of caste, slander, abusive language, or assault. Application to be by petition on eight-anna stamped paper, to be presented in person, unless petitioner is prevented from sickness, or is a female who, according to the customs and manner of the country, ought not to be compelled to appear in public, when the petition may be presented by an authorized agent. If not in form, the petition to be rejected. If presented by an agent, the Court may order a petitioner to be examined as an absent witness. The Court may reject the application—(1) if matter of suit is not within jurisdiction; or (2) claim is barred by limitation; or (3) if there is no reasonable ground for action; or (4) if petitioner is not a pauper, or has disposed of property fraudulently, or with a view to obtain the

benefit of this chapter. After summary inquiry, the Court to pass a final order. The Court can direct a local inquiry. If the petitioner's application be granted, it must be numbered and registered, and deemed the plaint in the suit. (Sections 297 to 311, Act VIII. 1859.)

73. *Q.* How is the application to be made for reference of a suit to arbitration? and what is the order of reference to contain?

A. An award to arbitration can only proceed on the express recorded assent of both parties. The order of reference is to contain the matters in difference in the suit which the arbitrators are required to determine, and shall fix a time for the delivery of the award. (Sections 312, 315, Act VIII. 1859.)

74. *Q.* How is the award of the arbitrators to be submitted to the Court?

A. Under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the suit. (Section 320, Act VIII. 1859.)

75. *Q.* In what cases may a Court remit the award, or any of the matters referred to arbitration, for re-consideration?

A. (1) If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred; (2) if it is so indefinite as to be incapable of execution; (3) if an illegality is apparent upon the face of it. (Section 323, Act VIII. 1859.)

76. *Q.* Can questions be raised for the decision of a Civil Court by any person interested?

A. Yes, parties interested in the decision of any question of fact, or law, or equity, may enter into an agreement that, upon the finding of a Court in the affirmative or negative of such question, they will act on the decision of the Court. (Section 328, Act VIII. 1859.)

77. *Q.* When, and in what form, must an appeal be preferred?

A. Appeal must be made in the form of a memorandum,—within thirty days if it be to a District Court, within ninety days if to the Sudder Court; the days to be reckoned from and exclusive of the day on which judgment was pronounced, and also such time as is requisite for obtaining a copy of the decree. (Section 333, Act VIII. 1859.)

78. *Q.* Will the appeal operate as a stay of execution of the decree?

A. No. But if sufficient cause be shown, the Appellate Court, after the expiration of the time allowed for appeal, and the lower Court before such time, may order that it be stayed. (Section 338, Act VIII. 1859.)

79. *Q.* What are the provisions of section 342 relative to demanding from the appellant security for costs?

A. It is in the discretion of the Appellate Court to require security for costs from appellant before calling on the respondent to appear and answer. Security *must* be demanded in all cases where the appellant is residing out of British India, and is not possessed of land or other immovables within British India. (Section 342, Act VIII. 1859.)

80. *Q.* How far may the respondent impeach the decree of the Court below?

A. Upon the hearing of the appeal, respondent may object to decision of the lower Court, in the same manner as if he had preferred a separate appeal. (Section 348, Act VIII. 1859.)

81. *Q.* How is the judgment in appeal given?

A. In the manner prescribed for giving judgment in Courts of original jurisdiction. See answers to questions 52 and 53, *antè*. (Section 349, Act VIII. 1859.)

82. *Q.* How far is fresh evidence admissible on the hearing of the appeal?

A. Production of additional evidence of appeal is not a matter of right. If it appears that the lower Court refuse to admit competent evidence, or if Appellate Court required any exhibits to be produced or witnesses examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the Appellate Court may allow additional evidence. Such additional evidence may be taken by the Appellate Court before itself, or it may require the lower or any other Court, or empower any person, to take such evidence and to prescribe the manner in which such evidence shall be taken. In all such cases the Appellate Court must define the point or points to which the evidence is to be confined, and record the same on its proceedings. (Sections 355 to 357, Act VIII. 1859.)

83. *Q.* How is the judgment to be delivered? and what should it contain?

A. (1) The point or points for determination; (2) the decision

thereupon; (3) reasons for the decision; (4) shall be dated and signed by the Judge or Judges concurring therein. It is to be delivered in open court. (Section 359, Act VIII. 1859.)

84. *Q.* When may a case be remanded by an Appellate Court?

A. When the lower Court has disposed of the case upon any preliminary point, so as to exclude any evidence of fact which appears essential to the rights of the parties, *and the decree is reversed on that point.* (Section 351, Act VIII. 1859.)

85. *Q.* What is the form of application of an appeal *in formâ pauperis* to contain?

A. (1) The particulars required to be set forth in the memorandum of appeal, and shall be drawn up in like manner; (2) it shall have annexed a schedule of applicant's movables or immovables, with the estimated value thereof; (3) and must be accompanied by copies of judgment and decree appealed against. (Section 369, Act VIII. 1859.)

86. *Q.* Within what time, and upon what paper, should the application for review of judgment be made?

A. Within ninety days, unless reasonable cause be shown to the contrary. On stamped paper prescribed for petitions, if within the above period; on stamped paper prescribed for plaints, if later. (Section 377, Act VIII. 1859.)

87. *Q.* B, a collector in Bombay, *bonâ fide* believing that A had opened a quarry upon Government waste land, forcibly stopped his operations in the quarry, with a view that revenue might at a future time be collected from the land; A sued B in trespass. Had the Small Cause Court jurisdiction?

A. Yes; the case not being a matter concerning revenue. (5 Bo. H. C. R.; section 25, Act IX. of 1850; Bro. C. P. C.)

88. *Q.* Who are deemed to be within the jurisdiction of the Presidency Small Cause Courts?

A. All persons who dwell or carry on their business, or work for gain, within the district of the Court at the time of bringing the action, or who did do so when the cause of action arose, or within six months before the time of bringing the action, for causes of action which arose within the same time. (Section 28, Act IX. 1850.)

89. *Q.* Give the pecuniary jurisdiction of the several Mofussil Small Cause Courts in Bengal, North-Western Provinces, Madras, Bombay, Oudh, Central Provinces, and the Punjaub, (1) in regular suits relating to real and personal property, and (2) suits for money due on bond or other contract, or for rent, or for personal property under Act XI. 1865.

A. In all of them. (1) Nil; (2) 500. (Act XI. 1865.)

90. *Q.* Can a minor prosecute a suit in any Court holden under Act IX. of 1850?

A. Yes; for any sum of money not greater than 500 rupees due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age. (Section 31, Act IX. 1850.)

91. *Q.* What is the rule, under Act IX. of 1850, prohibiting splitting up a cause of action?

A. A plaintiff is not allowed to divide any cause of action for the sake of bringing two or more suits in any of the said courts, but if he has a cause of action for more than 500 rupees, he may abandon the excess. (Section 34, Act IX. 1850.)

92. *Q.* How can a payment of fine imposed under Act IX. of 1850 be enforced?

A. In like manner as payment of any debt adjudged in the said court. (Section 51, Act IX. 1850.)

93. *Q.* How is execution to be taken out if there be cross judgments between the parties?

A. Execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum. (Section 57, Act IX. 1850.)

94. *Q.* When can a judgment or execution be stayed by any writ of error or *supersedeas* thereon?

A. When the amount recovered exceeds one hundred rupees, and then only after the person suing out such writ shall become bound with two sufficient sureties in treble the sum adjudged to be recovered to prosecute the said writ with effect, and also to satisfy and pay the debt or damages and costs adjudged, and all costs and damages awarded for the delay of execution. (Section 79, Act IX. 1850.)

95. *Q.* What is the duty of the Clerk of the Court as to moneys paid into court, which have remained unclaimed for five years?

A. He shall in March each year make out a correct list of all such sums for five years before the 1st of January then last past, specifying the names of the parties for whom or on whose account the same were paid into court, a copy of such list to be put up during court hours in a conspicuous part of the Court-house, and at all times in the Clerk's office; and all sums unclaimed for the period of six years are applicable as part of the fees receivable on account of the Court, and shall be carried to the same account. (Section 82, Act IX. 1850.)

96. *Q.* How are arrears of rent not exceeding 500 rupees recoverable?

A. Under the provisions of Act VII. 1847, to regulate distresses for small rents in Calcutta. (Section 89, Act IX. 1850.)

97. *Q.* Within what time must all actions and prosecutions be commenced under Act IX. of 1850?

A. Within three calendar months after the fact committed; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action. (Section 111, Act IX. 1850.)

98. *Q.* Has the Court power under any circumstances to vary the rate of diet-money for a prisoner's subsistence?

A. Yes; in case of illness, or other special cause, to order that the amount be deposited after such rate, not exceeding six annas for each day, as may to him seem necessary. Every such order may from time to time be revised on due cause being shown. (Section 2, Act XX. 1857.)

99. What is the limit of the jurisdiction of the Presidency Small Cause Courts?

A. Recovery of any debt, damage, or demand up to 1,000 rupees (except the several actions specified in the proviso in section 25, Act IX. 1850). Such Courts may take cognizance of suits for sums exceeding 1,000 rupees if both parties agree thereto by a memorandum signed by them, or their attorneys, and filed with the clerk of the Court to this effect. (Sections 2, 3, Act XXVI. 1864.)

100. *Q.* Is there any provision in any of the Presidency Small Cause Acts for reserving questions for the opinion of the High Court? If so, state the provision.

A. In any cause exceeding 500 rupees, the Judges shall reserve any question of law or equity, or any question as to the admission or rejection of any evidence as to which they entertain any doubts, or which they shall be requested by either party to the suit to reserve

for the opinion of the High Court, and shall give judgment contingent upon the opinion of the High Court on a case which they shall thereupon be entitled to state to the said Court. (Section 7, Act XXVI. 1864.)

101. *Q.* What is the law as to fees payable to barristers and attorneys under Act XXVI. of 1864?

A. An attorney shall be entitled to have or recover a sum not exceeding 51 rupees for his fees and costs, and in no case shall any fee exceeding 85 rupees be allowed for employing a barrister as counsel in the cause. The expense of employing a barrister or attorney, either by plaintiff or defendant, shall not be allowed as costs, unless determined by the Judge in what cases such expenses shall be allowed. (Section 13, Act XXVI. 1864.)

102. *Q.* State the suits cognizable by Mofussil Courts of small causes.

A. (1) Claims for money due on bond or other contract; (2) for rent; (3) for personal property, or for the value of such property; (4) or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of 500 rupees, whether on balance of account or otherwise. (Section 6, Act XI. 1865.)

103. *Q.* What power has the Small Cause Court to refer questions of law or usage to the High Court?

A. In suits for an amount not exceeding 500 rupees, the Court *may*, either of its own motion, or on the application of any of the parties to the suit, and in suits of above 500 rupees, the Court *shall*, draw up a statement of the case, and refer it, with the Court's own opinion, for the decision of the High Court. (Section 22, Act XI. 1865.)

104. *Q.* Have the Small Cause Courts power to refer for the decision of the High Court questions of law or usage arising previous to the hearing of a suit, or in execution of the decree or order in any such suit?

A. Yes; in suits for an amount not exceeding 500 rupees, *may*, either of its own motion or on the application of any of the parties to the suit, and in suits above 500 rupees, *shall*, draw up a statement of the case, and refer it, with the Court's own opinion thereon. If the question has arisen previous to the hearing, the Court may either stay such proceedings, or proceed in the case, notwithstanding such reference, and pass a decree contingent upon the opinion of the High Court upon the point referred. If a decree has been made, the execution thereof shall be stayed until the receipt of the order of the High Court upon such reference. (Section 1, Act X. 1867.)

CHAPTER VI.

EVIDENCE ACT.

1. *Q.* What are dying declarations? and when do they become "depositions"?

A. "Dying declarations" are statements as to cause of death. When made on oath, in the presence of the accused, they become "depositions."

2. *Q.* Give an example of a disjunctive hypothetical syllogism.

A. The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant; or, as Mr. Norton puts it,—

X is either A, B, or C.
But it is not B or C.
Therefore it is A. (N. L. E. 118.)

3. *Q.* Explain the term "character" in the phrase "evidence to character." When is such evidence relevant? when must it be limited to general character? and when may it extend to particular acts?

A. The term "character" includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition was shown.

In *civil* cases, the fact that the character of any person concerned is such as to render probable or improbable imputed conduct, is only relevant in so far as such character appears from facts otherwise relevant.

In *criminal* proceedings, previous good character is relevant.

In *civil* cases, character, as affecting damages, is relevant.

In *criminal* proceedings, previous conviction relevant, but not previous bad character, except in reply. (Sections 52 to 55, Act I. 1872.)

When a man is prosecuted for rape, or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character. (Section 155, clause 4, Act I. 1872.)

4. *Q.* Can witnesses to character be cross-examined, and re-examined?

A. Yes. (Section 140, Act I. 1872.)

5. *Q.* What is the legal meaning of the term "*Lis mota*"?

A. According to the Roman law, it referred to the institution of the suit; we, with more reason, refer it back to the commencement of the dispute. There is *lis mota* wherever there is a suit, or a controversy preparatory to a suit, in which the subject to which the declaration is directed will be involved. (N. L. E. 192.)

6. *Q.* A defendant in a suit, having received notice to produce at the trial two documents, produces one, and refuses to produce the other. How and on what conditions may the plaintiff use the first for his own purposes? and what disadvantages does the refusal to produce the second cause to the defendant?

A. He is bound to give it as evidence, if defendant requires him to do so. The refusal to produce causes the defendant this disadvantage, that he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

7. *Q.* Where the question is whether a document is genuine, *i.e.* in the handwriting of the party whose writing and signature it is alleged to be, what evidence is allowable to prove or disprove the forgery?

A. (1) Evidence by party. (Sections 21, 70.)
(2) Evidence by an attesting witness. (Section 68.)
(3) By oath of witnesses acquainted with handwriting; by experts. (Section 45.)
(4) By comparison of handwriting. (Section 73.)
(5) And if such document is *produced*, the admission of the parties to it, that it is or is not genuine, may be received. (Section 23, last clause.)

8. *Q.* What is the presumption as to the genuineness of foreign laws and reports? and also as to telegraphic messages?

A. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and reports of decisions of the Courts of such country.

The Court may presume that a telegraphic message forwarded corresponds with the message delivered for transmission; but the Court cannot presume by whom such message was delivered for transmission. (Sections 84 and 88, Act I. 1872.)

9. *Q.* In what way can maps, professional treatises, and books of authority be used in judicial proceedings?

A. Statements of facts in issue, or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts. Foreign laws may be proved by the production of any book purporting to be published by the Government of the country whose law it is requisite to prove. (Sections 36 and 38, Act I. 1872.)

10. *Q.* What is the presumption as to maps or plans made by the authority of Government? and when must their accuracy be proved?

A. In the first instance, the Court shall presume their accuracy. Maps and plans made for the purposes of any cause must be proved to be accurate. (Section 83, Act I. 1872.) The Court may presume that any book to which it refers for information on matters of general interest, and published map or chart, the statements of which are relevant facts, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published. (Section 87, Act I. 1872.)

11. *Q.* What are extra-judicial, and what judicial confessions? Can a prisoner explain away either of such confessions made by him?

A. Confessions or statements by accused or suspected persons, when made in writing out of court, or to or in the hearing of a private individual, are called "*extra-judicial.*" See also section 24, Evidence Act.

"*Judicial,*" when they are made in the course of a judicial proceeding, *e.g.*, in the presence of a judge or magistrate. See section 45, last clause, Code of Criminal Procedure.

Yes; a prisoner may be allowed to explain away any extra-judicial confession he may have made.

12. Who is a legal custodian of certified copies of public documents?

A. Any officer who, by the ordinary course of official duty, is authorized to deliver such copies. (Section 76, explanation.)

13. *Q.* How is "evidence" defined in the Act?

A. "Evidence" means and includes—(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry: such statements are called oral evidence. (2) All documents produced for the inspection of the Court: such documents are called documentary evidence. (Evidence Act, section 3, Act I. 1872.) It is to be observed, that the ambiguous term "hearsay" is abandoned, and that the expression "evidence" is confined to the actual media of proof.

14. *Q.* What does the term "fact" mean and include? How are "facts" divided in the Act? Give instances of each kind. Explain "facts in issue."

A. "Fact" means and includes—(1) Anything, state of things, or relation of things, capable of being perceived by the senses; *e.g.*, that a man heard or saw something, is a fact. (2) Any mental condition of which any person is conscious; *e.g.*, that a man has a certain intention, is a fact. Facts are divided in the Act into "relevant facts" and "facts in issue." The question is, whether A murdered B. Marks on the ground, produced by a struggle, at or near the place where the murder was committed, are relevant facts. A is accused of the murder of B. At his trial, the following facts may be in issue:—That A caused B's death; that A intended to cause B's death; that A had received grave and sudden provocation from B. "Facts in issue" mean any fact from which, either by itself, or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied, in any suit or proceeding, necessarily follows. A Court records an issue of fact. The fact to be asserted or denied in the answer to such issue is a fact in issue. (Section 3, Act I. 1872.) These are the only two classes of facts with which, in any event, Courts of Justice can be concerned, and of which the existence or non-existence has to be established before them by evidence. "Facts in issue" are the fact or group of facts to which, if its existence be proved, the substantive law of a given community attaches a definite legal consequence, generally an obligation, a right; *e.g.*, A proffers a promise to B, and B accepts it, and the understanding between them is reduced to writing, with certain formalities. The result of these facts, if either undisputed or established by evidence, is a contract under seal, to which the law annexes a definite set of legal consequences. "Relevant facts" are facts which affect the probability

of "facts in issue," or, in other words, have the capacity for furnishing an influence respecting them. A has been shot, and it is alleged B shot him with a particular intention. The first fact being undisputed, the second, the homicide by B, and the third, B's intention, are "facts in issue." But there are other facts which can be proved by witnesses. For instance, that B absconded shortly after the homicide; that footprints near its scene correspond with shoes found in B's possession; that shortly before its occurrence B bought a pistol; that there are blood-stains on B's clothes. These are "relevant facts." (F. R. lxxiii. N. S. 57.)

15. *Q.* Give instances in which evidence of,
(*a*) Flight,
(*b*) Preparation,
(*c*) Motive,
(*d*) Intention,
(*e*) Good faith,
would be receivable as relevant facts.

A. (*a*) The question is, whether A robbed B. The facts, that after B was robbed, C said, in A's presence, "The police are coming to look for the man who robbed B," and immediately afterwards A ran away.

(*b*) A is tried for the murder of B by poison. The fact that before the death of B, A procured poison similar to that which was administered to B.

(*c*) A is tried for the murder of B. The facts that A murdered C; that B knew A had murdered C; and that B had tried to extort money from A by threatening to make his knowledge public.

(*d*) A is accused of fraudulently delivering to another a piece of counterfeit coin, knowing it to be counterfeit. The fact that at the time A was possessed of a number of other pieces of counterfeit coin.

(*e*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant, as showing that A made the representation in good faith. (Sections 3 and 4, and illustrations.)

16. *Q.* What is the law with regard to the acts and statements of a conspirator against his co-conspirators?

A. An accomplice is a competent witness against an accused. (Section 133, Act I. 1872.) A and B are jointly tried for the murder of C. It is proved that A said, "B and I murdered C." The Court may consider the effect of this confession, as against B, as

well as against A. (Sec. 30, *id.*) This is a reasonable improvement on the old rule, because it is unreasonable to expect a Court or a jury to hear a confession given in evidence against one which affects the other prisoner, and not to have their minds influenced by that confession with regard to both prisoners.

17. *Q.* Under what circumstances is a "confession" irrelevant?

A. A confession by an accused in a criminal proceeding, if caused by any inducement, threat, or promise having reference to the charge, proceeding from a person in authority, and sufficient to give the accused grounds for reasonably supposing that by such confession he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him. (Section 24, Act I. 1872.)

18. *Q.* If a witness be dead, or cannot be produced, in what instances are his statements relevant, and as such receivable?

A. (1) When it relates to the cause of his death; *e.g.*, whether A was murdered by B. Statements made by A as to the cause of his death, referring to the murder, are relevant. (2) When the statement is made in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in ordinary course of business or discharge of professional duty, or the written acknowledgment of the receipt of goods, securities, or property of any kind, or of a document used in commerce, written or signed by him. (3) When it is against the interest of the maker, or, if true, would expose him to a criminal prosecution, or suit for damages. (4) When it gives an opinion as to public right or custom, or matters of general interest; *e. g.*, whether a given road is a public way. A statement made by A, a deceased headman of a village, that the road was so, is relevant. (5) When the statement relates to existence of relationship by blood, marriage, or adoption; *e. g.*, Was A, who is dead, B's father? A statement by A that B was his son is relevant. (6) When such statement is made in will or deed relating to family affairs. (7) When the statement is contained in any deed, will, or document which relates to any transaction by which the right or custom in question was created, claimed, modified, or recognized, asserted or denied, or which was inconsistent with its existence; (8) or is made by several persons, and expressed feelings or impressions on their part relevant to the matter in question; *e. g.*, A sues B for a libel, expressed in a painted caricature exposed in a shop window. The question is as to similarity of caricature and its libellous character. The remarks of a crowd of spectators on this point may be proved. (Section 13, clause (*a*), section 32, and illustrations, Act I. 1872.)

19. *Q.* What is necessary to make a deposition in

a previous judicial proceeding relevant in a subsequent judicial proceeding?

A. The proceedings must be between the same parties or their representatives in interest.

That the adverse party in the first proceeding had the right and opportunity to cross-examine.

That the questions in issue were substantially the same in the first as in the second proceeding. (Section 33, Act I. 1872.)

20. *Q.* What is "secondary evidence"? What is necessary in order to admit secondary evidence of a document?

A. "Secondary evidence" means and includes—(1) certified copies given under the provisions contained in the Evidence Act; (2) copies from originals by mechanical process, and copies compared with copies; (3) copies made or compared with the original; (4) counterparts of documents, as against parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it.

If the original is in the possession or power of the person against whom the document is sought to be proved, or if some one out of reach of, or not subject to the process of the Court, or if a person legally bound to produce it, who after due notice given fails to produce it, or when the original has been destroyed or lost, or cannot be produced in time, or when the original is not easily movable, any secondary evidence of the contents is admissible.

When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest, *a written admission* is admissible.

When the original is a public document, or when it is one of which a certified copy is permitted to be given in evidence, a certified copy, but *no other* kind of secondary evidence, is admissible when the original consists of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of such documents by any person who has examined them, and who is an expert. (Sections 63 and 65, Act I. 1872.)

21. *Q.* When need notice to produce a document not be given?

A. (1) When the document to be produced is itself a notice; (2) when the adverse party must know he will have to produce it; (3) when the adverse party has obtained possession of the original by force or fraud; (4) when the adverse party has the original in court; (5) when person in possession of the document is out of

reach of or not subject to the powers of the Court. (Section 66, Act I. 1872.)

22. *Q.* When may, and may not, oral evidence be given with reference to a written contract or disposition of property?

A. May be given when—(1) the language of the document, though plain in itself, is unmeaning in reference to existing facts. Oral evidence may be given to show that it was used in a particular sense. (2) As to the application of language which can apply to one only of several persons; *e. g.*, A agrees to sell B, for 1,000 rupees, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant. (3) Or as to application of language to one of two sets of facts, to neither of which the whole correctly applies. (4) Evidence as to meaning of illegible characters of foreign, obsolete, technical, local, and provincial expressions, of abbreviations of words, and in a peculiar sense.

May not be given when—(1) evidence of terms of contracts, grants, and other dispositions of property reduced to the form of a document. (2) When the language used is, on its face, ambiguous or defective; *e. g.*, A agrees in writing to sell B a horse for 1,000 or 1,500 rupees. Evidence cannot be given to show which price was to be given. And (3) when language used in a document is plain in itself. (Sections 91 to 98, Act I. 1872.)

23. *Q.* On whom does the burden of proof generally lie? Give illustration.

A. On that person who would fail if no evidence at all were given on either side. The burden of proof lies on him who substantially asserts the *affirmative* of an issue,—the affirmative in effect and substance, not in mere form; *e. g.*, A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C., B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A. (Section 102, Act I. 1872.)

24. *Q.* Part II. of the Evidence Act deals with "proof;" what does this term "proof" mean?

A. The manner in which facts must be proved, as distinguished from the person upon whom the proof lies.

25. *Q.* Does the doctrine of privilege as to professional communications exist? and is such a communication protected by any provision of the Evidence Act?

A. It was laid down in the *Annesly* case in the last century that there is no privilege in a criminal case. This doctrine was affirmed and adopted to the fullest extent by Lord Hatherley when Chancellor; and in re R. v. Castro, *alias* Orton, &c., the Lord Chief Justice said, "Where anything is done, or any communication passes between the client and his attorney with reference to a fraudulent purpose, the privilege does not exist." Justices Mellor and Lush concurred, the latter adding, "The law does not allow any one under the name of privilege to withhold evidence which may tend to sustain a criminal charge." Any professional communication made in furtherance of any illegal purpose, any fact showing that any crime or fraud had been committed, is not protected. (Section 126, Act I. 1872.)

26. *Q.* Define "document." Are inscriptions on metal plates and on tombstones documents? Is the definition in the Evidence Act, and the definition in the Penal Code, of the term "document" the same or not?

A. "Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. Yes, they are documents. Yes, they are similar. (Section 3, Act I. 1872; section 29, Act XLV. 1860.)

27. *Q.* When shall the Court on proof of one fact regard another fact as proved?

A. When one fact is declared by the Evidence Act to be conclusive proof of another, evidence is not allowable for the purpose of disproving the other fact, which is regarded as proved. (Section 4, Act I. 1872.)

28. *Q.* Define "admission." Are admissions conclusive proof of matters admitted?

A. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue, or relevant fact, and which is made by a party to the proceeding or his agent, or a suitor in representative character, or party interested in subject matter of the proceeding, making statements in their character of persons so interested, or by person from whom interest is derived, if made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position or liability must be proved as against party to suit, if such statements would be relevant as against such persons in a suit brought by or against them; and if

made while such person occupies such position, or is subject to such liability. Admissions by persons expressly referred to by party to suit.

Admissions are not conclusive proof of matters admitted, but may estop. (Sections 17 to 20, and sec. 31, Act I. 1872.)

29. *Q.* When may an admission be proved by or on behalf of the person making it, or by his representative in interest?

A. (1) When it is of such a nature that, if the person making it were dead, it would be relevant as between third persons. (2) When it consists of a statement of the existence of any state of mind or body, relevant or in issue, made about the time when such state existed, and is accompanied by conduct rendering its falsehood improbable. (3) If it is relevant otherwise than as an admission. (Section 21, Act I. 1872.)

30. *Q.* When are oral admissions as to contents of a document relevant?

A. When the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document, or when the genuineness of a document produced is in question. (Section 22, Act I. 1872.)

31. *Q.* In any case can a confession made by an accused to a police officer, or a confession made by, or information received from, an accused while in the custody of the police, be proved against such person?

A. No confession made to a police officer can be proved as against such person, nor can a confession made whilst in the custody of the police, unless made in the immediate presence of a magistrate. Any fact deposed to as discovered in consequence of information received from an accused under the above circumstances as relates distinctly to the fact thereby discovered, may be proved. (Sections 25 to 27, Act I. 1872.)

32. *Q.* When are judgments or orders of a Court of Justice relevant? And state under what circumstances an order or decree may be shown to be irrelevant.

A. Previous judgments are relevant to bar a second trial. A final judgment, order, or decree of a competent Court in probate, matrimonial, admiralty, or insolvency jurisdiction, is relevant when the existence of any such legal character, or the title of any such person to

any such thing, is relevant. Other judgments, &c., are relevant if they relate to matters of a public nature relevant to the inquiry. Judgments, &c., the existence of which is a fact in issue, or is relevant under the Evidence Act. Any party to a suit or proceeding may show that any judgment which is relevant under sections 40, 41, and 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion. (Sections 40 to 44, Act I. 1872.)

33. *Q.* What does the term "proof" mean? What facts need not to be proved?

A. "Proof" means the manner in which facts must be proved, as distinguished from the persons upon whom the proof lies.

Facts judicially noticeable; facts admitted need not be proved. (Sections 56 and 58, Act I. 1872.)

34. *Q.* Define "primary evidence" and "secondary evidence."

A. "Primary evidence" means the document itself, produced for the inspection of the Court. "Secondary evidence" includes—(1) certified copies; (2) copies made from the original by mechanical processes, and copies compared with such copies; (3) copies made from or compared with the original; (4) counterparts of documents as against the parties who did not execute them; and (5) oral accounts of the contents of a document given by some person who has seen it. (Sections 62, 63, Act I. 1872.)

35. *Q.* Define "public documents."

A. (1) Documents forming the acts or records of the acts—(*a*) of the sovereign authority, (*b*) of official bodies and tribunals, and (*c*) of public officers, legislative, judicial, and executive. (2) Public records kept in British India of private documents. (Section 74, Act I. 1872.)

36. *Q.* A, accused of murder, alleges that by reason of unsoundness of mind he did not know the nature of the act. Again, A is charged with travelling on a railway without a ticket. State on whom the burden of proof lies, and give the reason for your answer.

A. In both cases the burden of proof is on A. In the first case, because, when a person is accused, the burden of proving that the case comes within any general or special exceptions is on the accused. In the second case, because the burden of proving any fact especially within knowledge is upon the accused. (Sections 105 and 106, Act I. 1872.)

37. *Q.* What are the provisions of the Evidence Act regarding the burden of proof as to continuance of life? and as to the burden of proof as to death?

A. The burden of proving that a person is alive who has not been heard of for seven years, is on the person who affirms that he is alive. In the latter case, the burden of proof of death of person known to have been alive within thirty years, is also on the person who affirms it. (Sections 107, 108, Act I. 1872.)

38. *Q.* The good faith of a sale by a client to an attorney is in question in a suit brought by the client. On whom is the burden of proof of the good faith of the transaction? Give a reason for your answer.

A. On the attorney, because proof of good faith in transactions where one party is in relation of active confidence, is on the party who is in a position of active confidence. (Section 111, Act I. 1872.)

39. *Q.* What is conclusive proof of legitimacy?

A. Birth during marriage, or within two hundred and eighty days after dissolution of marriage, the mother remaining unmarried, unless it can be shown that the parties to the marriage had no access to each other at any time when a child could have been begotten. (Section 112, Act I. 1872.)

40. *Q.* Define "estoppel."

A. When one person has by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. (Section 115, Act I. 1872.)

41. *Q.* How many witnesses are necessary in India, and in England, to prove the offence of treason?

A. In England, two witnesses are necessary. At common law in England, one witness was sufficient in cases of treason, just as in every other case; the law which requires two is statutory. (N. L. E. 326.) In India the evidence of one is sufficient. (Section 134, Act I. 1872.)

42. *Q.* How is the order of production and examination of witnesses to be regulated?

A. By the law and practice for the time being relating to criminal and civil procedure respectively; and, in the absence of any such law, by the discretion of the Court. (Section 135, Act I. 1872.)

43. *Q.* What is the order in which witnesses are to be examined, and cross-examined? and what questions are lawful in cross-examination?

A. (1) The examination in chief, *i.e.*, the examination of a witness by the party who calls him. (2) The cross-examination of a witness by the adverse party. (3) Re-examination, *i.e.*, the examination of a witness subsequent to the cross-examination, by the party who called him. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination in chief. Leading questions may be asked in cross-examination. Questions (*a*) to test his veracity, (*b*) to discover who he is, and what his position in life, or, (*c*) to shake his credit, may also be asked in cross-examination. (Sections 137, 138, 143, and 146, Act I. 1872.)

44. *Q.* Is a person summoned to produce a document a witness? and can he be cross-examined?

A. He does not become a witness by the mere fact that he produces the document, and cannot be cross-examined unless and until he is called as a witness. (Section 139, Act I. 1872.)

45. *Q.* What is the meaning of the term "leading question"? and when may they, and when may they not, be put?

A. Any question suggesting the answer which the person putting expects or wishes to receive is a leading question. Leading questions must not, if objected to by the adverse party, be asked in an examination in chief or in re-examination, except with the permission of the Court. Leading questions may be asked in cross-examination. (Sections 141 to 143, Act I. 1872.)

46. *Q.* If an advocate asks a witness a criminating or insulting question without reasonable grounds, how can the Court act?

A. Report the circumstances of the case to the High Court, or other authority to which such advocate is subject in the exercise of his profession. (Sec. 150, Act I. 1872.)

47. *Q.* What is the power of the Court as to suppressing indecent, scandalous, insulting, or annoying questions?

A. The Court may forbid such questions. (Sections 151, 152, Act I. 1872.)

48. *Q.* Can a person calling a witness put any question to him which might be put in cross-examination?

A. Yes, by permission of the Court. (Section 154, Act I. 1872.)

49. *Q.* How can the credit of a witness be impeached?

A. (1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit; (2) by proof that the witness has been bribed or has accepted the offer of a bribe, to give his evidence; (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; (4) when a person is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of an immoral character. (Section 155, Act I. 1872.)

50. *Q.* What is the law regarding communications made to each other by husband and wife during marriage?

A. No person who is or has been married shall be compelled to disclose any such communication, nor shall he be permitted to do so, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other. (Section 122, Act I. 1872.)

51. *Q.* What is the law as to the evidence of husbands and wives, for or against each other, (1) in civil cases, (2) in criminal proceedings?

A. In *civil* proceedings, the parties to the suit, and the husband or wife of any party to the suit, is a competent witness.

In *criminal* proceedings against any person, the husband or wife of such person respectively is a competent witness. (Section 120, Act I. 1872.)

52. *Q.* Who may testify? Is a lunatic an incompetent witness? How may dumb witnesses give their evidence? What is the only disqualification as to persons testifying?

A. All persons are competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or giving rational answers to those questions, by tender years,

the two are brought into contiguity. Presumptions are drawn from the course of nature; *e.g.*, that night will follow day. Presumptions of law are based, like presumptions of fact, on the uniformity of deduction which experience proves to be justifiable; they *differ*, in being invested by law with the quality of a rule which directs that they *must* be drawn; they are not permissive, like natural presumptions, which *may* or may not be drawn; and presumptions of law again differ in their force, according as they are rebuttable or irrebuttable. (N. L. E. 88.)

61. *Q.* What are the conclusive presumptions recognized by the Indian Evidence Act?

A. (1) Birth during marriage, and (2) a notification in the *Gazette of India* that any portion of British territory has been ceded to any native state, prince, or ruler. (Sections 112, 113, Act I. 1872.)

62. *Q.* What is the object of chapter ii. on "relevancy"? and what is the principle on which it has been framed?

A. The object of this chapter is to point out in what cases collateral facts are relevant, and as such may be proved.

Relevancy is concerned with the relations between facts considered as antecedents, and consequents as cause and effect. The principle on which the legislature has proceeded is to exclude evidence of all collateral facts which are not capable of affording any reasonable presumption as to the principal matters in dispute. (N. L. E. 90.)

63. *Q.* Give instances in which evidence of,

(*a*) Opportunity,

(*b*) Previous conduct,

(*c*) Previous and subsequent conduct of the accused, would be receivable as relevant facts.

A. (*a*) See clause C, section 7, Act I. 1872.
(*b*) See illustration D, section 8, Act I. 1872.
(*c*) See illustration E, section 8, Act I. 1872.

64. *Q.* Give instances in which evidence of—(*a*) statements made in the presence of the accused;

(*b*) Conduct of a party alleging that an offence has been committed against him or her, and of his or her statements accompanying such conduct, would be receivable as relevant facts.

And state if any novelty has been introduced

into the law of evidence in either of the above cases.

A. (*a*) See illustrations F, G, H, section 8, Act I. 1872.
(*b*) See illustrations J, K, section 8, Act I. 1872.
The illustrations J and K introduce a novelty in the law of evidence. Hitherto, the *fact* only of a complaint having been made, has been receivable, but not the *particulars* of which such complaint consisted.

65. *Q.* What is the difference between a *statement* and a *complaint?* and is this distinction of any importance?

A. The essential difference between the two is that the latter is made with a view to redress or punishment, and must be made to some one in authority. This distinction is of importance, because while a *complaint* is always relevant, a *statement*, not amounting to a complaint, will only be relevant under particular circumstances; *e.g.*, if it amount to a dying declaration, or can be used as corroborative evidence. (N. L. E. 108.)

66. *Q.* What are the cases in criminal practice in which evidence of collateral facts is received with greater latitude than in any others?

A. (1) Conspiracy; (2) receiving stolen property; and (3) uttering forged documents, notes, or coins.

67. *Q.* Is there any other way of making an admission besides orally, or in writing?

A. Yes; by conduct (see section 8, Act I. 1872, and illustrations). *E.g.* The plaintiff's title to sue, or the character in which the plaintiff sues, or in which the defendant is sued, is frequently admitted by the acts and conduct of the opposite party. (N. L. E. 140.)

68. *Q.* Instance a case when such an admission, though not strictly an estoppel, is conclusive.

A. B has dealt with A as farmer of the post-horse duties; it is evidence in an action by A against B, to prove that he is such farmer. (N. L. E. 140.)

69. *Q.* What is the difference between the law in India and England as to the reception of second-hand evidence not made on oath?

A. The principal difference is that, in England, this class of evidence can only be received when the author of the statement *is dead;* and in dying declarations, by the English law, the declarant must entertain no hope of recovery. In India, it matters not

whether there existed even any expectation of death at the time of making the declaration. According to English law, a dying declaration is not receivable in civil suits. Under the Indian Evidence Act it is. (N. L. E. 177.)

70. *Q.* Give instances in which evidence of—
(*a*) Statements in course of business,
(*b*) Statements against interest,
(*c*) Matters of public right or custom, or of public or general interest,
made by persons who cannot be called as witnesses, is receivable.

A. (*a*) See illustrations *b*, *c*, *d*, *g*, *j*, section 32, Act I. 1872.
(*b*) See illustrations *e*, *f*, *id.*
(*c*) See illustration *i*, *id.*

71. *Q.* What is the difference between the terms "public" and "general" in the last preceding question?

A. "*Public*" applies to that which relates to every member of the State; "*General*," to that which applies to a lesser, but still considerable, number of the population.

72. *Q.* Contrast a latent with a patent ambiguity as regards the admissibility, or otherwise, of parol evidence to explain it.

A. A patent ambiguity is one which appears on the face of an instrument; a latent ambiguity, one which is not so patent, but arises on investigation as to what things or persons are designated by words used in it. The evidence is admitted to enable the Court to find out what the person meant by the words he used; but, as a rule, evidence is not admissible to show what words he intended to use.

73. *Q.* Illustrate this proposition: "that the law presumes against a wrong-doer."

A. The plaintiff having found a ring, took it to the defendant, a jeweller, to ascertain the value of the stone contained in it; the defendant extracted the stone and kept it. On the trial, members of the trade were examined to prove what a jewel of the finest water that would fit the socket was worth, and the Judge directed the jury, that unless the defendant produced the jewel, they should make the value of the best jewel the measure of the damages given, *and presume the strongest against the defendant.* The jury did so. (1 Smith. L. C. 315.)

CHAPTER VII.

LIMITATION ACT.

1. *Q.* Define "minor," "nuisance," and "foreign country."

A. "Minor" means a person who has not completed his age of 18 years; "nuisance" means anything done to the hurt or annoyance of another's immovable property, and not amounting to a trespass; "foreign country" means any country other than British India. (Section 2, Act IX. 1871.)

2. *Q.* When is a suit said to be instituted, (1) in ordinary cases? (2) in the case of a pauper? (3) in a case against a company which is being wound up by the Court?

A. (1) When the plaint is presented to the proper officer; (2) when his application for leave to sue as a pauper is filed; (3) when the claimant sends in his claim to the official liquidator. (Section 4, Act IX. 1871.)

3. *Q.* The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right—when can he institute a suit?

A. At any time within three years from the date of his coming of age. (Section 7, Act IX. 1871.)

4. *Q.* When once time has begun to run, does any subsequent disability or inability to sue stop it?

A. No; but where letters of administration to the estate of a debtor have been granted to his creditor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues. (Section 9, Act IX. 1871.)

5. *Q.* What is the period of limitation in the following cases, and when does such period begin

to run in each case respectively :—(1) To recover possession of immovable property under Act XIV. 1859? (2) For wages of a domestic servant, artisan, or labourer? (3) For the price of food or drink sold by the keeper of an hotel or lodging-house?

A. (1) Six months; when the dispossession occurs. (2) One year; (except in certain special cases under Act IX. 1860); when the wages sued for accrue due. (3) One year; when the food or drink is delivered. (Sections 3, 7, 8, schedule 2, Act IX. 1871.)

6. *Q.* In computing the period of limitations prescribed, (1) for an appeal, (2) an application for a review of judgment, and (3) for an application to set aside an award, what periods are to be excluded?

A. (1) and (2) The day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed. (3) The time requisite for obtaining a copy of the award. (Section 13, Act IX. 1871.)

7. *Q.* What is the period of limitation to set aside any of the following sales :—(*a*) Sale in execution of a decree of Civil Court? (*b*) sale in pursuance of a decree, or order of a collector? (*c*) sale for arrears of Government revenue? And when does such period begin to run?

A. In each of the above cases the period of limitation is one year. The time when the period begins to run is from when the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought. (Section 14, schedule 2, Act IX. 1871.)

8. *Q.* What is the term of limitation in suits not provided for in the Act?

A. A residuary clause has been inserted, which provides a six years' limitation from the time when the right to sue accrues for suits not otherwise provided for. (Section 118, schedule 2, Act IX. 1871.)

9. *Q.* Is any limitation imposed by the Act in proceedings for a divorce?

A. No; it is expressly provided that the Act does not apply to

proceedings under the Divorce Act. The Divorce Act itself contains no period of limitation.

10. *Q.* What is the period of limitation in the following cases, and when does such period begin to run:—(1) For false imprisonment? (2) for a malicious prosecution? (3) for libel? and (4) for slander?

A. In each case one year. Time begins to run—in (1) when the imprisonment ends; (2) when the plaintiff is acquitted; (3) when the libel is published; and (4) when the words are spoken. (Sections 21, 23, 24, 25, schedule ii. Act IX. 1871.)

11. *Q.* Must limitation be set up as a defence before a suit can be barred under the statute? And what is the reason for the present rule?

A. Suits, appeals, and applications barred by the statute shall be dismissed, *although limitation has not been set up as a defence.* (Section 4, Act IX. 1871.) This rule has been laid down because it is important that people who mean to stand on their legal rights should enforce them in a reasonable time.

12. *Q.* What is the period of limitation in the following cases, and when does such period begin to run:—(1) For obstructing a way? (2) for recovery of a wife? (3) for the restitution of conjugal rights?

A. In each case two years. The period begins to run—(1) from the date of obstruction; (2) when possession is demanded and refused; and (3) when restitution is demanded and refused. (Sections 31, 41, 42, schedule ii. Act IX. 1871.)

13. *Q.* Are cases of supervenient disabilities provided for by this Act? *e.g.*, suppose a right to sue accrues to a minor, who afterwards, and before his majority, goes mad, is his right protected till the end of his madness?

A. The case of what are called supervenient disabilities is not provided for in the Act; the reason is, that such cases will be so rare that it is not worth while to make complicated provisions to provide for them, and because, after all, minors have guardians and next friends, and madmen have committees who can sue in their names.

14. *Q.* When does a promise or acknowledgment take the case out of the Limitation Act?

A. (1) In respect of a debt, if it is signed by the party to be charged, or by his agent, generally or specially authorized thereto; (2) the payment of interest on a debt; (3) part payment, when in the case of part payment, of principal, the debt has arisen from a contract in writing, and the fact of the payment appears in the handwriting of the person making the same, on the instrument, or in his own books, or in the books of a creditor. (Sections 20, 21, Act IX. 1871.)

15. *Q.* What is the period of limitation in the following cases, and when does such period begin to run:—(1) For the hire of animals, vehicles, boats, or household furniture? (2) for the price of goods sold and delivered, where no fixed period of credit is agreed upon? (3) for money payable, for money lent? (4) against a factor for an account?

A. In each case the period of limitation is three years. The period begins to run in—(1) when the hire becomes payable; in (2) from the date of delivery of the goods; (3) in when the loan is made; and in (4) when the account is demanded, or, where no such demand is made, when the agency terminates. (Sections 49, 51, 56, and 64, schedule ii. Act IX. 1871.)

16. *Q.* According to what calendar are instruments for the purposes of this Act deemed to be made? and what is the object of this provision?

A. Deemed to be made with reference to the Gregorian calendar. The object is to have a simple and easy rule, which saves a deal of trouble and discussion, and has no other effect than that of slightly extending the period of limitation, which would be granted if the computation were made according to the native years. (Section 26, Act IX. 1871.)

17. *Q.* What is the law of prescription in British India? and what is the general object of the law of prescription?

A. The Limitation Act provides that twenty years' user shall give a prescriptive right to an easement. Twelve years was thought too little, and thirty years far too much. This is the English rule in most cases, and it has this advantage, that whilst it gives ample time for a protest to be made against the usurpation of an easement, it lies well within memory and can be easily proved. (Part iv. section 27, Act IX. 1871.)

The general object of the law of prescription has been stated by Lord Plunket as follows:—"Time holds in one hand a scythe, in the

other an hour-glass. The scythe mows down the evidence of our rights; the hour-glass measures the period which renders that evidence superfluous." The law of prescription is thus happily defined as "the hour-glass in the hand of time." (Mr. Stephens' Speech on Limitation Act.)

18. *Q.* What is the period of limitation in the following cases, and when does such period begin to run in each case :—(1) In a suit by a Mahomedan for exigible dower (mu-ajjal)? (2) for deferred dower (mu-wajjal)? (3) by a Hindu manager of a joint estate for contribution in respect of payment made by him on account of the estate?

A. In each case three years. Period begins to run—in (1) when the dower is demanded and refused, or when the marriage is dissolved by death or divorce; in (2) when the marriage is dissolved by death or divorce; and in (3) the date of the payment. (Sections 103, 104, and 107, schedule ii. Act IX. 1871.)

19. *Q.* What is the period of limitation in the following cases, and when does such period begin to run in each case :—(1) For specific performance of a contract? (2) for the rescission of a contract? (3) upon a judgment obtained in a foreign country? and (4) on a promise or contract in writing, registered?

A. In (1) and (2), three years; in (3) and (4), six years. Period begins to run—in (1) when the plaintiff has notice that his right is denied; in (2) when the contract is executed by the plaintiff; in (3) from the date of judgment; and in (4) when the period of limitation would begin to run against a suit brought on a similar promise or contract not registered. (Sections 113, 114, 116, and 117, schedule ii. Act IX. 1871.)

20. *Q.* Property has been stolen from A, or he has lost it, and it has fallen into other hands; what is the time from which period of limitation begins to run in such a case?

A. Demand and refusal is the time when the period in such a case begins to run; that is practically equivalent to no period of limitation. (Section 47, schedule ii. Act IX. 1871.)

21. *Q.* In the case of a Hindu excluded from joint family property, what is the period of limitation

to enforce his right? and when does such period begin to run? and why does the law give him this practically unlimited right to sue?

A. When the plaintiff claims and is refused his share is the time when the period begins to run. Twelve years is the period of limitation. The reasons for this are,—(1) the extreme tenacity with which the people cling to their family property; and (2) the fact that individual members of an undivided family will frequently leave their home for many years to work elsewhere, always intending to return when they have an opportunity of doing so. It would be natural to make the time run from the exclusion, but in practice, no one act amounts to an exclusion. (Section 127, schedule ii. Act IX. 1871.)

22. *Q.* What is the period of limitation in the following cases, and when does such period begin to run in each case:—(1) Suit by a Hindu for maintenance? and (2) suit to establish or set aside an adoption?

A. In each case twelve years. The period begins to run—in (1) when the maintenance sued for is claimed and refused; and in (2) the date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father. (Sections 128, 129, schedule ii. Act IX. 1871.)

23. *Q.* What rules are to be followed when one period of limitation is prescribed by the Limitation Act, and another specially prescribed by a local law?

A. If such law is not mentioned in the schedule to the Limitation Act, or was passed after the Limitation Act, such law is in no way affected by the provisions of the Limitation Act. (Section 6, Act IX. 1871.)

24. *Q.* What is the law as to suits on foreign contracts? and under what circumstances is a foreign rule of limitation a defence to a suit in British India?

A. Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by the Indian Limitation Act. No rule of foreign limitations is a defence to a suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule. (Sections 11 and 12, Act IX. 1871.)

25. *Q.* A contracts to pay an annuity to B for his life, by quarterly instalments. In such a case, when does a right to sue arise? and can the remedy on any one breach be barred without affecting the remedy of later breaches?

A. Upon the failure of payment of an instalment,—and upon every fresh failure, a fresh right to sue arises, and a fresh period of limitation begins to run. Yes, the Limitation Act bars the remedy on an earlier breach without affecting the remedy on a later breach. (Section 23, Act IX. 1871.)

26. *Q.* In the case of a suit for compensation for an act lawful in itself, which becomes unlawful by causing damage, how is the period of limitation to be computed? Give an example.

A. The period of limitation is to be computed from the time when the damage accrues; *e.g.*, A owns the surface of a field; B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence. (Section 25, Act IX. 1871.)

27. *Q.* What is the period of limitation for suits by the Secretary-of-State for India?

A. Sixty years. This is a revival of the old law, Regulation II. of 1805, section 2, which was repealed by the Repealing Act of 1868.

28. *Q.* What is the period of limitation in the following cases, and when does such period begin to run in each case:—(1) In a suit against a depositary or pawnee, to recover movable property deposited or pawned? and (2) against a mortgagee to recover possession of immovable property mortgaged?

A. (1) Thirty years; the date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawner, or of his right of redemption, has, before the expiration of the prescribed period, been made in writing, signed by the depositary or pawnee, or some person claiming under him, and in such case the date of the acknowledgment. (2) Sixty years; the date of the mortgage, unless where an acknowledgment of the title of the mortgagor, or of his right of redemption, has, before the expiration of the prescribed period, been made in writing, signed by the mortgagee or some person claiming under him, and in such case the date of the acknowledgment. (Schedule ii. sections 147, 148, Act IX. 1871.)

CHAPTER VIII.

SUCCESSION ACT.

1. *Q.* (1) State broadly what the Succession Act comprises, and (2) what class of persons come within the provisions of the Act?

A. (1) The law of succession and inheritance generally applicable to all classes domiciled in British India, other than Hindus, Mahomedans, and Buddhists. (2) All persons within British India dying testate or intestate, with the following exceptions:—(*a*) As to movable property, persons dying elsewhere; (*b*) Hindus, Mahomedans, and Buddhists; (*c*) Parsees. (Sections 2, 5, 331 of Succession Act, and Act XXI. of 1865.)

2. *Q.* State the principal instances in which the Indian Succession Act differs from the law on this subject in England.

A. (1) The distinction between the devolution of movables and immovables is abolished. (2) After the 1st January, 1866, no person is by marriage to acquire any interest in the property of the person whom he or she marries, or to become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

3. *Q.* Define "immovable property," and what does the term "incorporeal tenement" include?

A. "Immovable property" includes land, "incorporeal tenements," and things attached to the earth, or permanently fastened to anything which is attached to the earth.

An "incorporeal tenement" includes every modification of right concerning land to which the law has attributed a substantive, though invisible, being. It consists of a right, not to the possession of the land itself, but to some benefit to arise out of it; *e. g.*, rents, private rights of way, rights to running water, and to light. (W. S. I. S. A. 3.)

4. *Q.* Define "minor." What is the rule as to a minor's domicile, and also as to the settlement of minors' property in contemplation of marriage?

A. "Minor" means any person who shall not have completed the age of eighteen years. The domicile of a minor follows the domicile of a parent, from whom he derives his domicile. The property of a minor, whether movable or immovable, may be settled in contemplation of marriage by the minor with the approbation of the minor's father, or, if he be dead, or absent from British India, with the approbation of the High Court. (W. S. I. S. A. sections 3, 14, 45, and *notes*.)

5. *Q.* Define "will" and "codicil," and what is presumed by the destruction of the former in the case of a will and codicil?

A. "Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death. "Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will. A codicil is *primâ facie* dependent on the will, and the destruction of the will is presumed to be a revocation of the codicil. (W. S. I. S. A. section 3.)

6. *Q.* What is the law regulating succession to a deceased's movables and immovables in British India?

A. Succession to the immovables is regulated by the law of British India, wherever deceased may have had his domicile at the time of his death. Succession to the movables is regulated by the law of the country in which deceased had his domicile at the time of his death. (W. S. I. S. A. section 5.)

7. *Q.* What is the domicile of origin, (1) of a person of legitimate birth? (2) of illegitimate birth? and (3) where the child's parents are unknown?

A. (1) In the country in which, at the time of his birth, his father was domiciled. If a posthumous child, in the country in which his father was domiciled at the time of the father's death. (2) In the country in which, at the time of his birth, his mother was domiciled. (3) The Act makes no provision for such a case. It is submitted that the domicile of origin is in such a case the place of its birth, or that where it is found. (W. S. I. S. A. sections 7, 8, and *notes*.)

8. *Q.* What is the presumption of law as to the continuance of domicile of origin, and what are the circumstances which amount to a proof of the acquisition of a new domicile?

A. The presumption is, that the domicile is retained, unless the

change is proved. The burden of proving the change is on him who alleges it. The circumstances amounting to proof of the acquisition are—1st, the *factum* of taking up a new habitation in a country not that of his origin, and 2nd, that such habitation be fixed, *i. e.*, taken up with the *animus manendi* in the new locality. (W. S. I. S. A. section 9, and *notes*.)

9. *Q.* Is there any special mode of acquiring a domicile in British India?

A. Yes; by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing, under his hand, of his desire to acquire such domicile. Such person must have been resident in British India for one year immediately preceding making such declaration. (W. S. I. S. A. section 11.)

10. *Q.* What is the domicile acquired—(1) by a woman on marriage? (2) a widow on re-marriage? And what is the wife's domicile during marriage? And are there any exceptions in the latter case?

A. (1) She acquires the domicile of her husband, if she had not the same domicile before. (2) Her domicile will be that of her second husband.

The wife's domicile during the marriage follows the domicile of her husband. *Exception*:—The wife's domicile no longer follows that of the husband, if separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation. (W. S. I. S. A. sections 15 and 16.)

11. *Q.* Define the following terms: (1) probate, (2) kindred of consanguinity, (3) lineal consanguinity, and (4) collateral consanguinity.

A. (1) Means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator. (2) Is the connection or relation of persons descended. (3) Is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, and great-grandson, and so downwards in the direct descending line. (4) Is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other; in other words, to take the sum of the degrees in both lines to the common ancestor. (Sections 3, 20, 21, and 22, W. S. I. S. A.)

12. *Q.* A sum of money is bequeathed towards purchasing a country residence for A, or to purchase

an annuity for him, or a commission in the army, or to place him in any business. Can he elect to take the money, and what is the principle of this rule?

A. If A chooses to receive the legacy in money, he is entitled to do so. The rule rests on the principle, that the legatee ought not to be compelled by a Court to do what he may undo the next moment, as by selling the residence, or giving up the business. (Section 125, W. S. I. S. A., and *notes.*)

13. *Q.* What are "privileged wills"? and give illustrations of them.

A. Any soldier employed in an expedition, or engaged in actual warfare, or mariner being at sea, if he has completed the age of eighteen years, is allowed to make and have attested his will in a less formal manner than is usually necessary; *e.g.*, A is at sea in a merchant ship of which he is the purser. B is a soldier serving in the field. Both these parties can make privileged wills. (Section 52, I. S. A.)

14. *Q.* Define a "demonstrative legacy," and give illustrations of it.

A. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same a primary fund out of which payment is to be made, the legacy is said to be demonstrative; *e.g.*, an annuity of 500 rupees "from his funded property." (Section 137, I. S. A.)

15. *Q.* Define "ademption," and give illustrations of it.

A. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; *e.g.*, A bequeaths to B the diamond ring presented to him by C. A in his lifetime sells or gives away the ring,—such legacy is adeemed. (Section 139, I. S. A.)

16. *Q.* Define "onerous bequest."

A. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully. (Section 109, I. S. A.)

17. *Q.* When is a legacy said to be "specific"? Illustrate it.

A. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his pro-

perty, the legacy is said to be specific; *e.g.*, A bequeaths to B "the diamond ring presented to him by C," or "his gold chain," or "the sum of 1,000 rupees in a certain chest,"—each of these legacies is specific. (Section 129, I. S. A.)

18. *Q.* What are the rules for the devolution of the property of a person dying intestate?

A. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in order and according to the rules prescribed in the Succession Act.

A dies intestate, leaving a widow and lineal descendants. His widow gets one-third of his property, and the remaining two-thirds go to his lineal descendants.

A dies intestate, leaving a widow and persons who are of kindred to him, but no lineal descendants. His widow takes one-half, and the other half goes to his kindred.

A dies intestate, leaving a widow and no kindred. His widow takes the whole.

A dies intestate, leaving no widow and no kindred. His property goes to the Crown. (Sections 26, 27, and 28, I. S. A.)

19. *Q.* Explain the doctrine of "election."

A. Where a man by his will professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him in the will. Election may be expressed or implied. (Section 167, W. S. I. S. A., and *notes.*)

20. *Q.* Illustrate the doctrine of "election."

A. A bequeaths to B 1,000 rupees, and to C an estate, which will, under a settlement belong to B, if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy. (Section 169, illustration (*c*), I. S. A.)

21. *Q.* What is the rule against "perpetuities"?

A. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong. (Section 101, I. S. A.)

22. *Q.* Illustrate a bequest of something described in general terms, and state the duty of the executor in respect of it.

A. A bequeaths to B *a* pair of carriage-horses or *a* diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it. (Section 158, I. S. A.)

23. *Q.* What are the rules with regard to the execution of unprivileged wills?

A. (1) The testator shall sign or affix his mark to the will, or it must be signed by some one in his presence and by his direction. (2) Such signature or mark must be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. (3) The will shall be attested by two or more witnesses, each of whom must have seen such signature or mark affixed, or have received from the testator a personal acknowledgment of such mark or signature, and each of the witnesses must sign the will in the presence of the testator. (Section 50, I. S. A.)

24. *Q.* What is the effect of a gift to an attesting witness?

A. A will is not to be considered insufficiently attested by reason of such benefit, but the bequest or appointment is void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them. (Section 54, I. S. A.)

25. *Q.* Where A by will bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin, can a Court make inquiry for the purpose of ascertaining to what person the description in the will applies?

A. Yes. (Section 62, illustration (*a*), I. S. A.)

26. *Q.* Will an error in the name or description of a legatee prevent a legacy from taking effect where the words sufficiently show what is meant?

A. No. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name. (Sec. 63, I. S. A.)

27. *Q.* In what cases will extrinsic evidence be admissible as to the intentions of the testator?

A. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, such evidence may be taken to show which of these applications was intended. (Section 67, I. S. A.)

28. *Q.* What is the rule where a clause is open to two constructions, according to one of which it has some effect, according to the other none?

A. That which has some effect is to be preferred. (Section 71, I. S. A.)

29. *Q.* In what cases are "conditional bequests" good, and in what cases void?

A. Bequests made upon illegal, immoral, or impossible conditions, are void; in all other cases they are good. (Sections 113, 114, W. S. I. S. A., and *notes*.)

30. *Q.* When a will imposes a condition to be fulfilled before the legatee can take a vested interest in the bequest, what will be considered a fulfilment of the condition?

A. If it has been substantially complied with. (Section 115, I. S. A.)

31. *Q.* Where there is a bequest to the children of A who survive him, and if they all die under eighteen, then to B; A dies without having had any children: the failure not having taken place, as contemplated by the testator, will the bequest to B take effect?

A. Yes. (Section 116, illustration (*a*), I. S. A.

32. *Q.* What is the effect of a bequest of a fund absolutely to or for the benefit of A, with a direction that it shall be applied or enjoyed in a particular manner?

A. The legatee shall be entitled to receive the fund as if the will had contained no such direction. (Section 125, I. S. A.)

33. *Q.* A directs that his trustee shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and shall at his death divide the principal amongst his children. The son dies without ever having had a child, what becomes of the fund?

A. The fund belongs to the estate of the testator. (Section 127, illustration (*a*), I. S. A.)

34. *Q.* A legacy is bequeathed to one named as an executor to the will; he declines to prove or act in the execution of the will,—is he entitled to the legacy?

A. No. (Section 128, I. S. A.)

35. *Q.* Suppose A bequeaths B a diamond ring, what is the duty of the executor with regard to the bequest?

A. The executor must give effect to the bequest by his assent within a year, unless the assets are not sufficient to pay the funeral expenses, deathbed charges, law costs, and debts. (Sections 279, 280, 281, 285, 288, 292, and 297, I. S. A.)

36. *Q.* Suppose the interest or produce of a fund is bequeathed to any person, and the will is silent as to any intention that the enjoyment of the bequest should be of any limited duration, what interest does the legatee take?

A. He takes the whole interest in the fund—principal as well as interest belongs to the legatee. (Section 159, I. S. A.)

37. *Q.* What evidence to show how a revival was intended to operate in doubtful cases, is excluded by the provisions of the Evidence Act?

A. Parol evidence.

38. *Q.* How is the meaning of any particular clause in a will to be ascertained?

A. The meaning is to be collected from the entire instrument, and all its parts are to be construed with reference to each other. (Section 69, I. S. A.)

39. *Q.* What is meant by a will or bequest being "void for uncertainty"?

A. That it is "not expressive of any definite intention." The *object* and *subject* must both be defined. (Section 76, W. S. I. S. A., and *notes*.)

40. *Q.* Are gifts to several persons alternatively void for uncertainty?

A. No; in such a case, if a contrary intention does not appear by the will, the legatee first named is entitled to the legacy if he is

alive at the time it takes effect; but if dead, the next named in the alternative. (Section 83, I. S. A.)

41. *Q.* In a bequest made to a class of persons under a general description only, who alone can take?

A. Those constituting the class, and to exclude *all others*. (Section 85, W. S. I. S. A.)

42. *Q.* In what case does a legacy lapse?

A. If the legatee does not survive the testator. (Section 92, I. S. A.)

43. *Q.* What are void bequests?

A. (1) Bequest to a person by a particular description, who is not in existence at the testator's death. (2) Bequest to a person not in existence at the testator's death, subject to a prior bequest. (3) No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he complete the age of eighteen, the thing bequeathed is to belong. (4) A direction to accumulate the income arising from any property is void, except where the property is immovable, or where an accumulation is directed to be made from the death of the testator. (5) Death-bed bequests to charitable uses by persons having nephews and nieces, or any nearer relatives, except by will not less than twelve months before his death, and deposited within six months from execution in some place provided for the purpose. (Chapter xii. I. S. A.)

44. *Q.* What is the date of vesting of a legacy, (1) when payment or possession is postponed? (2) when the legacy is contingent upon a specified uncertain event happening?

A. (1) A right to receive at the proper time (unless a contrary intention appear by the will) becomes vested in the legatee on the testator's death. (2) When such event happens. (Sections 106, 107, I. S. A.)

45. *Q.* What are the rules as to the taking effect of "contingent bequests"?

A. Where a bequest is contingent upon a specified uncertain event, no time being mentioned for its occurrence, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable. Where a bequest is made to such of certain persons as shall be surviving at some period

not specified, the legacy goes to such as shall be alive at the time of payment or distribution, unless contrary to the will. (Sections 111, 112, I. S. A.)

46. *Q.* Is an original bequest affected by the invalidity of an ulterior bequest?

A. No. Where a condition subsequent is impossible, the doctrine is, that the condition is void, and the legacy single and absolute. (Section 120, W. S. I. S. A.)

47. *Q.* What is the rule as to the retention of property specifically bequeathed to several persons in succession?

A. It must be retained in the form the testator left it, although its value is continually decreasing. (Section 134, I. S. A.)

48. *Q.* At whose cost is the completion of the testator's title to things bequeathed to be made?

A. At the cost of the testator's estate. (Section 155, I. S. A.)

49. *Q.* For what term or period is an annuity created by will payable?

A. For life only, unless a contrary intention appears by the will. (Section 160, I. S. A.)

50. *Q.* When does an annuity abate, and in what proportion as between annuitants?

A. When the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity abates in the same proportion as the other pecuniary legacies under the will. The annuity is a general legacy. (Section 162, I. S. A.)

51. *Q.* Where there is a gift of an annuity, and a residuary gift, which has the priority?

A. The whole of the annuity is to be first satisfied. (Section 163, I. S. A.)

52. *Q.* What are the rules as to legacies to creditors and portioners?

A. They are both *primâ facie* entitled to the legacy as well as the debt. (Sections 164, 165, I. S. A.)

53. *Q.* To whom can probate be granted?

A. Only to an executor appointed by will. The appointment may be express or implied. (Sections 181, 182, I. S. A.)

54. *Q.* To whom can probate and letters of administration not be granted?

A. (1) A minor; (2) person of unsound mind; (3) to a married woman without the previous consent of her husband. (Section 183, I. S. A.)

55. *Q.* From when does probate establish a will?

A. From the death of a testator, and renders valid all intermediate acts of the executor. (Section 188, I. S. A.)

56. *Q.* From what period do letters of administration entitle an administrator to intestate's rights, and do such letters validate the administrator's acts?

A. From the moment after intestate's death. No; not any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate. (Sections 191, 192, I. S. A.)

57. *Q.* On what grounds can a Court exclude administration to the deceased's widow?

A. On the ground of personal disqualification, or because she has no interest in the estate of the deceased. (Section 201, I. S. A.)

58. *Q.* When is a man said to be "executor of his own wrong"? Give an illustration.

A. A man intermeddling with the estate of the deceased, or doing any other act which belongs to the office of executor, while there is no rightful executor or administrator; *e. g.*, A uses, or gives away, or sells, some of the goods of the deceased. He is an executor of his own wrong. (Section 265, I. S. A.)

59. *Q.* What is necessary to complete a legatee's title to his legacy?

A. The assent of the executor. (Section 292, I. S. A.)

60. *Q.* (1) Can such assent be "conditional"? and (2) from what period does assent of the executor give effect to a legacy?

A. (1) Yes; (2) from the death of the testator. (Sections 294, 296, I. S. A.)

61. *Q.* Where an annuity is given, and no time is fixed for its commencement, from when does it commence?

A. From the testator's death, and the first payment shall be made at the expiration of a year next after that event. (Section 298, I. S. A.)

62. *Q.* What is the liability of an executor or administrator for a *devastavit?*

A. He is liable to make good the loss or damage he occasions. For neglect to get in any part of the deceased's property, he is liable to make good the amount. (Sections 327, 328, I. S. A.)

63. *Q.* How does the income in respect of a contingent general residuary bequest between the death of the testator and the vesting of the legacy go —(1) in India, (2) in England?

A. (1) As undisposed of; (2) it falls into the residue.

64. *Q.* When can an executor call upon a legatee to refund? and when can he not call upon the legatee to refund? And what is the rule as to interest in such cases?

A. When he has paid a legacy under the order of a Judge, in the event of the assets proving insufficient to pay all the legacies. When the executor has voluntarily paid the legacy. The refunding is in all cases without interest. (Sections 316, 317, and 325, I. S. A.)

65. *Q.* Within what period can a creditor call upon a legatee to refund?

A. Within two years after the death of the testator, or one year after the legacy has been paid, he can call upon a legatee who has received payment of his legacy to refund. (Section 321, I. S. A.)

66. *Q.* (1) A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

(2) A bequeaths to B " all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East-India Stock. Are either or both of these legacies adeemed? Give your reasons for your answer.

A. (1) No; this legacy is not adeemed, because there is no

ademption of a specific bequest of goods described as connected with a certain place, by reason of removal.

(2) This legacy is not adeemed, because it took place without the knowledge or sanction of the testator. (Sections 147, 151, I. S. A.)

67. *Q.* A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. What is the duty of A's executors as to the redemption of such ring?

A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring. (Section 154, illustration (*a*), I. S. A.)

68. *Q.* What property is transferable by gift made in contemplation of death? and when is a gift said to be so made?

A. Of any movables which he could dispose of by will. A gift is so said to be made where a man who is ill expects to die shortly of his illness. (Section 178, I. S. A.)

69. *Q.* Can such a gift be resumed, and when is such a gift said to fail?

A. May be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made. (Section 178, I. S. A.)

70. *Q.* Detail the several grants of administration that are limited.

A. (1) Grants limited in duration; (2) grants for the use and benefit of others having right; (3) grants for special purposes; (4) grants with exception; (5) grants of the rest; (6) grants of effects unadministered; and (7) alteration in grants and revocation of grants. (Part XXX., I. S. A.)

71. *Q.* When may probate be granted of a copy or draft of the will, or of its contents?

A. When the will has been lost or mislaid since the testator's death, or destroyed by wrong or by accident, and not by any act of the testator, and a copy or draft of the will has been preserved. When the will has been lost or destroyed and no copy made nor draft preserved. When the will is in possession of a person residing out of the province, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for

the interests of the estate that probate be granted without waiting for arrival of the original. (Sections 208, 209, 210, I. S. A.)

72. *Q.* When, and for what purpose may letters of administration be granted to the attorney of an executor?

A. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, administration with the will annexed may be granted to the attorney for the use and benefit of his principal. (Section 213, I. S. A.)

73. *Q.* Under what circumstances can administration be granted *pendente lite?*

A. Pending any suit touching the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, administration may be granted by the Court, and an administrator so appointed is subject to the immediate control and direction of the Court. (Section 218, I. S. A.)

74. *Q.* Give an instance of the form of administration under which the grantee has only authority to carry on a suit, but no right to receive the fruits of it.

A. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act. (Section 222, I. S. A.)

75. *Q.* Give an example of grant of probate or administration with the will annexed, subject to exception.

A. If a testator appoint an executor for a special purpose, or a specific fund only, and appoint an executor for all other purposes, the latter may take probate, except that purpose or fund. (Section 226, W. S. I. S. A., and *note.*)

76. *Q.* When is a grant *cæterorum* made?

A. When the testator has appointed an executor for a special or specific fund, together with another executor for all other purposes and effects, and the first-mentioned executor has taken his limited probate, the other may take probate of the rest of the testator's effects. (Section 228, W. S. I. S. A., and *note.*)

77. *Q.* What is a "*grant de bonis non*"? and is there

any difference between the English and Indian law on the making of such a grant?

A. Grant of effects unadministered is technically called a "grant *de bonis non.*" This species of grant is, in England, made only when the executorship has not been legally transmitted. The Indian Succession Act wisely discards the English doctrine, that an executor on taking probate of his own testator's will becomes executor *ipso facto*, not only of that will, but also of the will of any testator of whom that other was sole or surviving executor, and so on *ad infinitum* upwards. (Section 229, and preface, p. xi., W. S. I. S. A.)

78. *Q.* How is a "*cessate* grant" distinguished from a "grant *de bonis non*"? Give an illustration of a supplemental grant.

A. The former is distinguished from the latter as being a re-grant of the whole of the deceased's personal estate, as it was embraced in the original grant. *Illustration*—An executor appointed for a year takes probate, the grant ceases on the expiration of a year, and the substituted executor, if there be one, takes probate. (Section 231, W. S. I. S. A.)

79. *Q.* What errors may be rectified by the Court, and the grant of probate be altered and amended accordingly?

A. Errors in names and descriptions, or in setting forth the time and place of the deceased's death; or the purpose in a limited grant. (Section 232, I. S. A.)

80. *Q.* For what reasons may a grant of probate or letters of administration be revoked or amended? Give illustrations of your answer.

A. For just cause. *Illustrations*—(1) The Court by which the grant was made had no jurisdiction. (2) An executor obtains probate of the will of a living person. (Section 234, and *note*, W. S. I. S. A.)

81. *Q.* When may probate or administration be granted by the District Judge?

A. When the testator or intestate at his death had a fixed dwelling, or any property within the jurisdiction of the Judge. (Section 240, I. S. A.)

82. *Q.* In what cases is a translation of the will to be annexed to the petition?

A. Where the will is written in any language other than English,

or than that in ordinary use in proceedings before the Court. (Section 245, I. S. A.)

83. *Q.* How are applications for letters of administration to be made?

A. By petition stating—(1) the time and place of deceased's death; (2) the family or other relatives of the deceased; (3) their respective residences; (4) the right in which the petitioner claims; (5) that the deceased left some property within the jurisdiction of the Judge to whom the application is made; and (6) the probable amount of assets. (Section 246, I. S. A.)

84. *Q.* How may any person having an interest prevent a grant of probate or administration being issued without notice to himself?

A. By lodging a *caveat* against the grant with the District Judge. (Section 251, I. S. A.)

85. *Q.* What is the procedure to be in contentious cases?

A. The proceedings must be as nearly as possible in the form of a regular suit, according to the provisions of the Code of Civil Procedure. (Section 261, I. S. A.)

86. *Q.* Where a legacy not specific is given for life, how is the bequest to be invested?

A. In such securities as the High Court may, by any general rule, from time to time made, authorize or direct. (Section 301, I. S. A.)

87. *Q.* From what time is—(1) a legatee of a specific legacy, and (2) the residuary legatee, entitled to the produce of such legacy or fund?

A. In each case from the testator's death. (Sections 309, 310, I. S. A.)

88. *Q.* What is the fixed rate of interest, and from what time does interest run—(1) When no time is fixed for payment of a general legacy? and (2) when a time has been fixed?

A. The rate of interest 4 per cent. per ann. In (1) interest begins to run from the expiration of one year from the testator's death; in (2) from the time so fixed. (Sections 311, 312, 313, I. S. A.)

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* For questions and answers under Act XXI. of 1870, extending the Indian Succession Act, *see* Chapter I. Hindu Law, *ante*.

CHAPTER IX.

CONTRACT ACT.

1. *Q.* How are contracts divided by the Common Law of England?

A. Into three classes: (1) Contracts by matter of record; (2) contracts under seal; and (3) simple contracts. (S. L. C. 3.)

2. *Q.* It is provided, that where both parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is void. Is an erroneous opinion as to the value of a thing which forms the subject-matter of the agreement to be deemed a mistake as to a matter of fact?

A. No. (Section 20, *Explanation*, Act IX. 1872.)

3. *Q.* When is an agreement in restraint of trade valid?

A. Agreement not to carry on business of which goodwill is sold, by partners on dissolution, or during continuance of partnership. (Section 27, Exceptions 1, 2, 3, Act IX. 1872.)

4. *Q.* Define "proposal" and "promise."

A. "Proposal" when one person signifies to another his willingness to do or to abstain from anything with a view to obtaining the assent of that other to such act or abstinence. "Promise," when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. (Section 2, Act IX. 1872.)

5. *Q.* When is a contract "voidable"? and when is it said to be "void"? and what is a "void agreement"?

A. An agreement which is enforcible by law at the option of one

or more of the parties thereto, but not at the option of the other or others, is a voidable contract. A contract which ceases to be enforcible by law becomes void. An agreement not enforcible by law is said to be void. (Section 2, Act IX. 1872.)

6. *Q.* When may a proposal, and when an acceptance, be revoked ?

A. The former at any time *before* the communication of its acceptance is complete as against the proposer. The latter at any time *before* the communication of the acceptance is complete as against the acceptor. (Section 5, Act IX. 1872.)

7. *Q.* What is necessary to convert a proposal into a promise ?

A. (1) Absolute and unqualified acceptance, or (2) acceptance expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. (Section 8, Act IX. 1872.)

8. *Q.* Is a patient in a lunatic asylum, who is at intervals of sound mind, competent to make a contract ? Who are competent to contract ?

A. Yes, during such intervals. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. (Section 12, illustration (*a*), section 11, Act IX. 1872.)

9. *Q.* A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 5,000 rupees a year. Is this agreement good ?

A. The agreement is void, the object of A's promise and the consideration for B's promise being in *part* unlawful. (Section 24, Act IX. 1872.)

10. *Q.* Under what circumstances is an agreement made without consideration not void ?

A. If it is in writing and registered, and made on account of natural love and affection between near relations, or is a promise to compensate for something done, or is a promise to pay a debt barred by law of limitation. (Section 25, Act IX. 1872.)

11. *Q.* Define "contingent contract."

A. A contract to do, or not to do, something, if some event col

lateral to such contract does, or does not, happen. (Section 31, Act IX. 1872.)

12. *Q.* A makes a contract with B to buy B's horse if A survives C. When can such a contract be enforced by law?

A. Not unless or until C dies in A's lifetime. (Section 32, Act IX. 1872.)

13. *Q.* A promises to pay B a sum of money if a certain ship returns within a year. (1) When can such a contract be enforced? and (2) when does it become void?

A. The contract may be enforced, if the ship returns within the year, and becomes void if the ship is burnt within the year. (Section 35, Act IX. 1872.)

14. *Q.* Give a case—(1) in which the representative of a promisor is bound by the promise of the promisor, in case of the death of the latter before performance; and (2) a case in which the representative would not be bound.

A. (1) A promises to deliver goods to B on a certain day, on payment of 1,000 rupees. A dies before that day. (2) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. (Section 37, Act IX. 1872.)

15. *Q.* What is the effect of the refusal of a party to perform a promise in its entirety?

A. The promisee may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance. (Section 39, Act IX. 1872.)

16. *Q.* What is the effect of accepting performance of a promise from a third person?

A. The promisee cannot afterwards enforce it against the promisor. (Section 41, Act IX. 1872.)

17. *Q.* A, B, and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one half of his debts. Is C entitled to recover anything from his co-sureties?

A. Yes; 500 rupees from A's estate, and 1,250 rupees from B (Section 43, illustration (*b*), Act IX. 1872.)

18. *Q.* What is the effect of the release by the promisee of one joint contractor, where two or more persons have made a joint promise?

A. The other joint promisors are not discharged, neither is the joint promisor so released freed from responsibility to the other joint promisors. (Section 44, Act IX. 1872.)

19. *Q.* What are the time and place for performance of promise—(1) where no time is specified by the contract, and no application to be made? and (2) where time and place for performance of promise are specified, and no application to be made?

A. (1) The engagement must be performed within a reasonable time, and the promisor should apply to the promisee to appoint a reasonable place for the performance of the promise, and perform it there. (2) The promisor may perform it at any time during the usual hours of business, on such day and at the place at which the promise ought to be performed. (Sections 46, 47, 49, Act IX. 1872.)

20. *Q.* What is to be the order of performance of reciprocal promises where the order is not expressly fixed?

A. That order which the nature of the transaction requires. (Section 52, Act IX. 1872.)

21. *Q.* When is a promisor excused for the non-performance of his promise?

A. When any promisee neglects or refuses to afford him reasonable facilities for the performance of his promise. (Section 67, Act IX. 1872.)

22. *Q.* There are certain relations resembling those created by contract, what are they?

A. (1) Claim for necessaries supplied to person incapable of contracting, or on his account; (2) reimbursement of person paying money due by another, in payment of which he is interested; (3) obligation of person enjoying benefit of non-gratuitous act; (4) responsibility of finder of goods; and (5) liability of person to whom money is paid or thing delivered by mistake or under coercion. (Sections 68 to 72, Act IX. 1872.)

23. *Q.* When a contract is broken, what is the sufferer entitled to receive for such breach? And in estimating the loss arising from such breach, what means are to be taken into account? and what matters are to be excluded?

A. Compensation for any loss or damage caused thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when contracting, to be likely to result from a breach. The means which existed of remedying the inconvenience caused by such non-performance *must* be taken into account. Compensation cannot be given for any remote or indirect loss or damage sustained. (Section 73, Act IX. 1872.)

24. *Q.* Define the meaning of the terms "goods" and "sale," as used in chapter vii. of the Contract Act.

A. "Goods" means and includes every kind of movable property. "Sale" is the exchange of property for a price: it involves the transfer of the ownership of the thing sold from the seller to the buyer. (Sections 76 and 77, Act IX. 1872.)

25. *Q.* A agrees to sell to B twenty tons of oil in A's cistern. A's cistern contains more than twenty tons of oil. Do the twenty tons of oil become B's property? Give the reasons for your answer.

A. No; no portion of the oil has become the property of B, because, where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of sale that the goods shall be ascertained. (Section 82, Act IX. 1872.)

26. *Q.* A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. When does the ownership of the indigo vest in B?

A. When the indigo has been manufactured, and A gives B an acknowledgment that he holds the indigo at his disposal. The ownership vests in B from the date of acknowledgment. (Section 87, illustration (*a*), Act IX. 1872.)

27. *Q.* Where the price of goods sold is not fixed by the contract of sale, how is the price to be determined?

A. The buyer is bound to pay the seller such price as the Court considers reasonable. (Section 89, Act IX. 1872.)

28. *Q.* How may delivery of goods be made? and what is the effect of delivery to a carrier?

A. Delivery may be made by doing anything which has the effect of putting the goods in the possession of the buyer, or of any person authorized to hold them on his behalf. Delivery to a carrier of goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the carrier responsible for the delivery of the goods. (Sections 90, 91, Act IX. 1872.)

29. *Q.* What is the effect of part-delivery of goods in progress of the delivery of the whole, for the purpose of passing the property in such goods?

A. The same effect as a delivery of the whole. (Section 92, Act IX. 1872.)

30. *Q.* Define "insolvency."

A. A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them. (Section 96, Explanation, Act IX. 1872.)

31. *Q.* When are goods deemed to be in transit? and what is the power of the seller to stop goods in transit? How is such stoppage to be effected? and what is the right of the seller on stoppage?

A. Goods are deemed in transit while in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged. A seller who has parted with his goods, and not been paid, may, if the buyer becomes insolvent, stop the goods while in transit, and may effect such stoppage either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository. Such stoppage entitles the seller to hold the goods stopped until they are paid for. (Sections 99, 100, 104, 106, Act IX. 1872.)

32. *Q.* How is an implied warranty of goodness or quality to be established?

A. By the custom of any particular trade. (Section 110, Act IX. 1872.)

33. *Q.* A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. Is the sale thereby rendered voidable?

A. No; but B is entitled to compensation from A for loss caused by the unsoundness. (Section 117, Illustration, Act IX. 1872.)

34. *Q.* When can a buyer refuse to accept goods sent him? And what is the effect of a wrongful refusal to accept?

A. When the seller sends to the buyer goods not ordered with goods ordered, if there is risk or trouble in separating the goods ordered from the goods not ordered. Wrongful refusal to accept amounts to a breach of contract. (Sections 119 and 120, Act IX. 1872.)

35. *Q.* Define "contract of indemnity."

A. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. (Section 124, Act IX. 1872.)

36. *Q.* Define "contract of guarantee," "surety," "principal debtor," and "creditor." May a *guarantee* be oral? Is the rule the same under English law?

A. "Contract of guarantee" is a contract to perform the promise or discharge the liability of a third person in case of default. The person who gives a guarantee is called the surety; the person in respect of whose default the guarantee is given is called the principal debtor; and the person to whom the guarantee is given is called the creditor. Guarantee may be either oral or written. (Section 126, Act IX. 1872.) Under sec. 4, Statute of Frauds, a *guarantee* must be in writing.

37. *Q.* Define "continuing guarantee."

A. A guarantee which extends to a series of transactions. (Section 129, Act IX. 1872.)

38. *Q.* Define "bailment," "bailor," and "bailee."

A. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned, or otherwise disposed of, according to the directions of the person delivering them.

The person delivering the goods is the "bailor"; the person to whom they are delivered, the "bailee." (Section 148, Act IX. 1872.)

39. *Q.* When is a contract of bailment voidable at option of bailor?

A. If the bailee does any act, with regard to the goods bailed, inconsistent with the conditions of the bailment. (Section 153, Act IX. 1872.)

40. *Q.* (1) What is the right of the finder of goods? (2) and when may he sue for specific reward? and (3) what is the responsibility of such finder?

A. (1) He has no right to sue owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find the owner; but he has a right to retain the goods until he receives such compensation. (2) Where the owner has offered a specific reward for the lost goods. (3) He is subject to the same responsibility as a bailee. (Sections 168 and 71, Act IX. 1872.)

41. *Q.* Define "pledge," "pawnor," and "pawnee," and what is the pawnee's right of retainer?

A. The bailment of goods as security for payment of debt, or performance of a promise, is a "pledge." The bailor is, in this case, the "pawnor"; the bailee, "pawnee." The pawnee may retain the goods pledged, not only for payment of the debt, or performance of the promise, but for the interest of the debt and all necessary expenses incurred by him in respect of the possession, or for the preservation of the goods pledged. (Sections 173, 174, Act IX. 1872.)

42. *Q.* Define "agent" and "principal."

A. An "agent" is a person employed to do anything for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is the "principal." (Section 182, Act IX. 1872.)

43. *Q.* Who may employ an agent? and who may be an agent? and is any consideration necessary to create an agency?

A. Any person who is of the age of majority, according to the law to which he is subject, and who is of sound mind, may employ an agent. As between the principal and third persons, any one may become an agent. No consideration is necessary to create an agency. (Sections 183, 184, 185, Act IX. 1872.)

44. *Q.* What is essential to a valid ratification?

A. Full knowledge of the facts of the case. (Section 198, Act IX. 1872.)

45. *Q.* How can an agency be terminated? and when does such termination of an agent's authority take effect, (1) as to the agent himself, and (2) as to third persons?

A. By the principal revoking his authority; by the agent renouncing business of agency; by business of agency being completed; by either the principal or agent dying, or becoming of unsound mind; by the principal being adjudicated an insolvent. (1) Cannot take effect before it becomes known to him. (2) Cannot take effect before it becomes known to them. (Sections 201, 208, Act IX. 1872.)

46. *Q.* How far is the principal bound when the agent exercises his authority? And when is the principal not bound to recognize his agent's authority?

A. When the part of what the agent does, which is within his authority, can be separated from that which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. The principal is not bound when what the agent does beyond the scope of his authority cannot be separated from what is within it. (Sections 227, 228, Act IX. 1872.)

47. *Q.* Define "partnership," "firm."

A. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them. Persons who have entered into partnership with one another are called collectively a "firm." (Section 239, Act IX. 1872.)

48. *Q.* Are the following parties or any of them responsible as partners:—(1) a lender by advancing money for share of profits? (2) an agent remunerated by share of profits? and (3) the widow of a deceased partner receiving an annuity out of profits?

A. No, none of them. (Sections 240, 242, and 243, Act IX. 1872.)

49. *Q.* What are the rules determining partners' mutual relations, in the absence of any contract to the contrary? And when may the Court dissolve a partnership?

A. See sections 253, 254, Act IX. 1872.

50. *Q.* What are the general duties of partners?

A. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership, to any partner, or his legal representatives. (Section 257, Act IX. 1872.)

51. *Q.* Define "free consent."

A. Consent is free when not caused by—(1) coercion; (2) undue influence; (3) fraud; (4) misrepresentation; and (5) mistake; subject to provisions of sections 21 and 22 of the Contract Act. (Section 14, Act IX. 1872.)

52. *Q.* What does the nature of a guarantee depend on? And what invalidates a guarantee?

A. The nature of a guarantee must always depend on the language of the contract, and when this is obtained by misrepresentation or concealment, the guarantee will be invalid. (Sections 142 and 143, Act IX. 1872.)

53. *Q.* What is to be considered a criterion of partnership?

A. By the definition given in the Contract Act of the term "partnership," community of profit is an essential part. By the decision of the House of Lords in Cox *v.* Hickman (8 H. L. Cases, 268), the criterion of partnership is considered to be whether the business is carried on on behalf of the person whose status as a partner is in dispute.

54. *Q.* What is the title conveyed by a seller of goods to the buyer? And is there any difference between the rule of English law on this point, and the rule laid down in the Indian Contract Act?

A. In regard to the title of the purchaser in goods sold, section 108 clearly illustrates the question. The general rule of English law is that the owner of the goods retains the ownership, notwithstanding that he has lost possession and has sold them to another. But to this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city. *Caveat emptor; qui ignorare non debuit quod jus alienum emit:*—Let a purchaser beware; no one ought in ignorance to buy that which is the right of another. From this English law our Indian legislators have slightly differed in regard to goods sold in open market. The Hon. Mr. FitzJames Stephen, in his elaborate speech at the Legislative Council of the 9th April, 1872, argued the question at length, and said that "the universal practice

of India is that the loss in case of theft should fall on the purchaser. This, the select committee were informed, is the law of all the independent native states, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers; and all the native states would feel themselves deeply injured." (1 Coleb., 301, 315, 317, book ii. chapter ii. sec i., vs. 3, 5, 25, 26, 29; Manu, viii. 199; Hedaya, ii. 508.) Thus the purchaser in India acquires no title in the property purchased by him even in the open market. As for sale by a single partner, without the consent of his copartners, the law does not protect the purchasers completely. (Expl. 2, McN. Hindoo Law, ii. 295; 1 Coleb., 303, book ii. chapter ii. section i. *v.* 6.; M. J. Nov. 1872, p. 415.)

55. *Q.* Define "consideration," "agreement," "contract."

A. When at the desire of the promisor the promisee or any other person has done, or abstained from doing, or does, or abstains, or promises to do, or to abstain from doing something, such act or abstinence, or promise, is called a *consideration* for the promise; every promise and every set of promises forming the consideration for each other is an agreement. An agreement enforcible by law is a contract. (Section 2, Act IX. 1872.)

56. *Q.* Illustrate "mistake," *ignorantia facti excusat, ignorantia juris non excusat.*

A. A being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void. A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian law of limitation. The contract is not voidable. N.B., but a mistake as to a law not in force in British India has the same effect as a mistake of fact. (Sections 20, 21, Act IX. 1872.)

57. *Q.* Agreements, (1) in restraint of trade, (2) in restraint of legal proceedings, and (3) by way of wager are void. Give an exception to the rule in each of the above cases.

A. (1) Partners may agree that some one or all of them will not carry on a business similar to that of the partnership within certain reasonable local limits; (2) saving of contract to refer to arbitration disputes that may arise; (3) exception in favour of certain prizes for horse-racing. (Sections 27, 28, 30, Act IX. 1872.)

58. *Q.* A bids 1,000 rupees for two pictures (500 rupees each) at a sale by auction; both pictures

receive injuries accidentally, subsequently to A having made his bid,—in one case before the hammer fell, in the other case after the hammer had fallen. Who is the loser in these cases?

A. In the former the seller, in the latter A. (Section 86, Act IX. of 1872.)

59. *Q.* What is the seller's lien where, by the contract, payment is to be made at a future day, but no time is fixed for the delivery of the goods?

A. The seller has no lien; the buyer is entitled to a present delivery without payment. (Section 96, Act IX. of 1872.)

60. *Q.* Give an example of a case where there is no implied warranty of fitness for any particular purpose on sale of article of a well-known ascertained kind.

A. B writes to A, the owner of a patent invention for cleaning cotton, "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the *particular purpose* of cleaning the cotton at B's factory. (Section 115, Illustration, Act IX. 1872.)

61. *Q.* Detail some of the acts which will discharge a surety.

A. Any contract between the creditor and principal debtor, by which the principal debtor is released, or by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor to which contract the surety has not assented, or by creditor's act or omission impairing the surety's eventual remedy. (Sections 134, 135, 139, Act IX. 1872.)

62. *Q.* What is the effect of mixture, with bailor's consent, of his goods with goods of bailee?

A. The bailor and bailee have an interest in proportion to their respective shares in the mixture thus produced. (Section 155, Act IX. 1872.)

63. *Q.* When may a bailor or bailee bring a suit against a third person?

A. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, either the

bailor or the bailee may bring a suit against such third person for such deprivation or injury. (Section 180, Act IX. 1872.)

64. *Q.* Define a sub-agent, and when may an agent employ a sub-agent?

A. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency. An agent cannot lawfully employ another to perform acts which he has personally undertaken, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency a sub-agent must, be employed. (Sections 190 and 191, Act IX. 1872.)

65. *Q.* State briefly an agent's duties to his principal, and the duties of the principal to his agent.

A. An agent must act—(1) according to the directions given by his principal; (2) in absence of such directions, according to the custom which prevails in doing similar business at the place where the agent conducts such business; (3) with reasonable diligence, and to use such skill as he possesses; (4) to render proper accounts; (5) in cases of difficulty to communicate with his principal and seek to obtain his instructions.

The principal—(1) is bound to indemnify his agent against the consequences of all lawful acts done by him in the exercise of the authority conferred on him; (2) agent to be indemnified against consequences of acts done in good-faith; and (3) the principal must make compensation to his agent for injury caused by the principal's neglect. (Sections 211 to 225, Act IX. 1872.)

66. *Q.* When shall a contract be presumed to have been entered into by an agent on behalf of his principal?

A. (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (2) where the agent does not disclose the name of his principal; and (3) where the principal, though disclosed, cannot be sued. (Section 230, Act IX. 1872.)

67. *Q.* Explain and illustrate Lord Bacon's maxim, "*Persona conjuncta æquiparatur interesse proprio.*"

A. There are certain things which a man may do for his own benefit or protection, or for that of a wife, child, or servant. "If a man," says Lord Bacon, "under the years of twenty-one contract for the nursing of his lawful child, this contract is good, and shall not be avoided by infancy." Thus a contract for necessaries to an infant's wife and lawful children is used by Lord Bacon as one of the illustrations of this maxim. (S. L. C. 297.)

CHAPTER X.

REGISTRATION ACT.

1. *Q.* Define "lease," "signature," "signed," "book."

A. "Lease" includes a counterpart, a kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease. "Signature" and "signed" include and apply to the affixing of a mark. "Book" includes a portion of a book, and also any number of sheets connected together with the view of forming a book or a portion of a book. (Section 3, Act VIII. 1871.)

2. *Q.* What are the documents—(1) the registration of which is compulsory under this Act? and (2) the registration of which is optional?

A. Compulsory—(1) Instruments of gift of immovable property; (2) other instruments (not being wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, vested or contingent, of the value of 100 rupees and upwards, to or in immovable property; (3) instruments (not being wills) which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest; (4) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; and (5) authority to adopt a son, executed after the 1st January, 1872, and not conferred by a will. *N.B.*—The following are exceptions to clauses (2 and 3) above mentioned:—(*a*) Composition-deeds, (*b*) transfers of shares in land companies, (*c*) any indorsement upon or transfer of any debenture issued by any such company. Optional:—(1) Instruments (other than of gift and will) which purport or operate to create, &c., of a value less than 100 rupees, to or in immovable property; (2) instruments acknowledging the receipt or payment of any consideration on account of the creation, &c., of any such right, title, or interest; (3) leases of immovable property for less than a year; (4) awards relating to immovable property; (5) instruments which purport or operate to create, &c., any right, title, or interest

to or in immovable property; (6) wills; (7) acknowledgments, agreements, appointments, assignments, &c., and all other documents not mentioned in the Act. (Sections 17 and 18, Act VIII. 1871.)

3. *Q.* How are documents (not testamentary) relating (1) to immovable property; (2) houses in a town; and (3) a document containing map or plan of property comprised therein, to be severally described?

A. (1) A description of such property sufficient to identify the same; (2) described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if numbered; (3) to be accompanied by a true copy of the map or plan, or in case such property is situate in several districts, by such number of true copies as are equal to the number of such districts. (Section 21, Act VIII. 1871.)

4. *Q.* Within what time must documents of which registration is compulsory be presented for registration, and what is the provision where the office is closed on the last day of period for presentation?

A. Within four months from the date of its execution, or, in case of a copy of a decree or order, within four months from the day on which such was made, or, where it is appealable within four months, from the day on which it becomes final. Such last day shall be deemed to be the day on which the office re-opens. (Sections 23 and 26, Act VIII. 1871.)

5. *Q.* What is the procedure prescribed by the Registration Act for enforcing the appearance of executants and witnesses?

A. The Registrar can call upon the officer or Court (appointed for this purpose by the Local Government) to issue a summons requiring such person to appear at the Registration-office, either in person or by agent, at a time therein named. (Section 36, Act VIII. 1871.)

6. *Q.* Who are exempted from appearing at the Registration-office?

A. A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at such office. A

person in jail, under civil or criminal process. Persons exempt by law from personal appearance in court. (Section 38, Act VIII. 1871.)

7. *Q.* Who are entitled to present wills, and authorities to adopt? and how are such documents to be registered?

A. The testator, or any person claiming as executor or otherwise under a will, and the donor or donee of any authority to adopt, or the adoptive son. A will or an authority to adopt presented by the testator or donor for registration, may be registered in the same manner as any other document. If presented by any other person entitled to present it, the Registrar must satisfy himself—(1) that the will or authority was executed by the testator or donor; (2) that the testator or donor is dead; (3) that the person presenting it is entitled to present it. (Sections 40, 41, Act VIII. 1871.)

8. *Q.* By whom must wills be deposited with the Registrar? and what is the procedure to be followed by the Registrar on the deposit of a will?

A. By the testator personally, or by his duly-authorized agent, in a sealed cover, superscribed with the name of the depositor and the nature of the document. On receiving such cover, the Registrar, if satisfied that the depositor is the testator or his agent, shall transcribe in his register-book, No. 5, the superscription on such cover, and note on the register and on such cover the year, month, day, and hour of such presentation and receipt, together with name of the persons testifying to the identity of such depositor and the inscription, so far as it is legible on the seal of the cover, and place and retain the sealed cover in his fireproof box. (Sections 42 and 43, Act VIII. 1871.)

9. *Q.* From what time does a registered document operate?

A. From the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. (Section 47, Act VIII. 1871.)

10. *Q.* Do registered documents relating to property take effect against oral agreements?

A. Yes; unless the agreement or declaration has been followed by delivery of possession. (Section 48, Act VIII. 1871.)

11. *Q.* What is the effect of non-registration of documents required to be registered?

A. No document required to be registered—(1) shall affect any immovable property comprised therein; (2) or confer any power to adopt; (3) or be received as evidence of any transaction affecting such property or conferring such power, unless registered. (Section 49, Act VIII. 1871.)

12. *Q.* Do registered documents take effect against unregistered documents?

A. Yes; registered documents relating to land of which registration is optional, take effect against unregistered documents, not being a decree or order. (Section 50, Act VIII. 1871.)

13. *Q.* Name the five books to be kept in registration-offices?

A. (1) Register of documents relating to immovable property.
(2) Record of reasons for refusal to register.
(3) Register of wills and authorities to adopt.
(4) Miscellaneous register. (The above to be kept in *all* registration-offices.)
(5) Register of deposits of wills (to be kept in the office of registrars). (Section 51, Act VIII. 1871.)

14. *Q.* What is to be indorsed on every document at the time of its presentation? and how are entries in each book to be numbered?

A. The day, hour, and place of presentation, and the signature of every person presenting a document for registration. All entries to be numbered in a consecutive series, commencing and terminating with the year; a fresh series being commenced at the beginning of each year. (Sections 52, 53, Act VIII. 1871.)

15. *Q.* What particulars are Indexes I., II., III. to contain?

A. No. I.—The names and additions of all persons executing, and of all persons claiming under every document copied into or memorandum filed in Book No. I. or No. III. Index No. II.—Such particulars regarding description of parcels relating to every such document and memorandum as the Inspector-general from time to time directs. Index No. III.—The names and additions of all persons executing, and of all persons claiming under every document copied into Book IV. (Section 55, Act VIII. 1871.)

16. *Q.* Define "addition."

A. "Addition" means the place of residence and the profession, trade, rank, and title (if any) of a person described; and in the case of a native, his caste (if any), and his father's name; and where

he is described as the son of his mother, then his mother's name. (Section 55, Act VIII. 1871.)

17. *Q.* What are the particulars to be indorsed on documents admitted to registration?

A. (1) The signature and addition of every person admitting the execution of the document; (2) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and, (3) any payment of money or delivery of goods, made in the presence of the registering officer, in reference to the execution of the document, and ditto any admission of receipt of consideration. (Section 58, Act VIII. 1871.)

18. *Q.* Has a registering officer any power to administer an oath?

A. Yes; at his discretion, to any person examined by him under the provisions of this Act. (Section 63, Act VIII. 1871.)

19. *Q.* What is the penalty for incorrectly indorsing, copying, translating, or registering documents with intent to injure? also for making false statements before registering officer, or delivering a false copy or translation, or falsely personating another?

A. Imprisonment for a term, which may extend to seven years, or with fine, or with both. (Sections 79, 80, Act VIII. 1871.)

20. *Q.* By whom are offences punishable under the Registration Act triable? And how are fines imposed under this Act recoverable?

A. By any Court or officer exercising powers not less than those of a subordinate magistrate of the first class. Fines may be recovered if for offences committed outside the limits of Presidency towns, in the manner prescribed by the Code of Criminal Procedure. If for offences within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force. (Section 81, Act VIII. 1871.)

21. *Q.* When may unclaimed documents be destroyed?

A. Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years. (Section 83, Act VIII. 1871.)

22. *Q.* Does defect in appointment or procedure invalidate the acts of a Registrar?

A. No; nothing done in good faith by any registering officer is invalid merely by reason of such defect. (Section 85, Act VIII. 1871.)

23. *Q.* What is to be the procedure of a sub-registrar on registration of documents relating to land situate (1) in several sub-districts? (2) in several districts?

A. (1) He shall make a memo. thereof and of the indorsement and certificate thereon, and send the same to every other sub-registrar subordinate to the same Registrar as himself, in whose sub-district any part of such property is situate; (2) he shall forward a copy thereof and of the indorsement and certificate thereon, together with a copy of the map or plan (if any), to the Registrar of every district in which any part of such property is situate. (Sections 64, 65, Act VIII. 1871.)

24. *Q.* To whom does an appeal lie against an order of a sub-registrar refusing to admit a document to registration? and what are the powers of the Appellate Court?

A. To the Registrar to whom such sub-registrar is subordinate, if presented within thirty days from the date of the order, and the Registrar may reverse or alter such order. (Section 72, Act VIII. 1871.)

CHAPTER XI.

STAMP ACTS.

1. *Q.* Define "affidavit," "award," "bill of exchange," and a "cheque." Is a cheque included in a bill of exchange?

A. "Affidavit" includes every declaration in writing, on oath or affirmation made before a person authorized by law to administer an oath. "Award" includes every decision in writing by an arbitrator or umpire. "Bill of exchange" includes a hundi, and every other instrument (*except a cheque*) whereby a person is ordered to pay to another a specified sum of money. "Cheque" includes every instrument whereby a bank, banker, or person acting as a banker, is ordered to pay on demand a specified sum of money. (Section 3, Act XVIII. 1869.)

2. *Q.* How are stamp duties to be levied?

A. (1) By adhesive stamps; (2) by impressed stamps. (Section 5, Act XVIII. 1869.)

3. *Q.* What is the rule as to duty chargeable on instruments reserving interest?

A. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with a duty higher than that with which it would have been chargeable had no mention of interest been made therein. (Sec. 9.)

4. *Q.* Are wills, and deeds of dower, not affecting immovable property, chargeable with stamp duty?

A No; they are exempt. No instruments are chargeable except those specified in the Schedule to Act XVIII. of 1869.

5. *Q.* By whom is the duty payable in the following cases—(1) in the case of a policy of inheritance? (2) in the case of a counterpart of a lease?

A. In the absence of an agreement to the contrary, in—(1) by the insured, and in (2) by the lessor. (Section 6, Act XVIII. 1869.)

6. *Q.* Name the two cases in which after-stamping is admissible under this Act. And what is the penalty for presenting an unstamped foreign bill?

A. The two cases are—(1) bills drawn out of British India, and (2) instruments chargeable with the duty of one anna for the payment of money on demand by any banker. A person presenting an unstamped foreign bill is liable for every such offence to a fine not exceeding one hundred (100) rupees. (Sections 8, 26, 28, 30, Act XVIII. 1869.)

7. *Q.* What is the scale according to which consideration expressed in foreign currency is to be estimated?

A. One pound sterling, or one pound currency, is equivalent to ten rupees; one hundred francs are equivalent to forty rupees; one Mexican or China dollar is equivalent to two rupees four annas; one Mauritius dollar is equivalent to two rupees. (Section 10, Act XVIII. 1869.)

8. *Q.* Where the value of the subject matter chargeable with *ad-valorem* stamp duty is indeterminate, how is the proper stamp to be determined?

A. The proper stamp may be determined by the person bound under section 6 to bear the expense of providing the stamp. (Section 10, Act XVIII. 1869.)

9. *Q.* A, by a bond, gives to B an annuity of 1,000 rupees, payable quarterly, for life. How is the amount secured to be calculated?

A. It is to be deemed to be ten times the amount of the payment calculated for one year. (Section 12, Act XVIII. 1869.)

10. *Q.* Where there are several instruments used in a single transaction involving the execution of a mortgage-deed, how are these instruments to be severally stamped?

A. The proper stamp for such mortgage-deed shall be borne by the principal instrument executed in such transaction, and each of the other instruments shall bear a stamp of one rupee. The parties may determine for themselves which of such instruments is to be deemed the principal instrument. (Section 13, Act XVIII. 1869.)

11. *Q.* What is the power of the Civil Court as to the reception of an unstamped or insufficiently stamped document?

A. Section 20 allows the Civil Court to receive the proper amount of stamp, not only in cases of insufficiency of stamp, but also where documents have not been stamped at all. (Section 20, Act XVIII. 1869; 15 W. R. 116.)

12. *Q.* What record is it necessary for a Civil Court to keep as to payments and penalties levied by it under this Act?

A. A book in which must be made an entry of every payment. The payment must also be indorsed on the instrument in respect of which it was made, and such indorsement must be signed by the presiding officer. At the end of every month, the Court must make a return to the Collector of the moneys so received, distinguishing between the sums received—(1) by way of penalty, (2) by way of duty. The number and title of the suit, the name of party paying the money, and the date and description of the instrument. (Section 21, Act XVIII. 1869.)

13. *Q.* What power have the Civil and Criminal Courts and Registrars as to impounding unstamped documents?

A. A registrar has no option when such a deed comes before him; the Civil and Criminal Courts have an option in the matter, and may impound the instrument, and send it to the Collector. (Sections 22, 23, Act XVIII. 1869.)

14. *Q.* What powers has the Collector—(1) as to instruments impounded and sent to him by a Civil or Criminal Court? (2) as to similar instruments sent to him by a registrar? and (3) what powers has the Collector as to unstamped, or insufficiently stamped, instruments produced before himself?

A. (1) He must prosecute the offender; (2) he has a discriminative power to deal with such deed, and may either prosecute or levy the insufficient duty without prosecution, and even without payment of penalty, where the case comes within the scope of sections 24, 25; (3) if produced otherwise than for the purpose of obtaining an adjudication, or sent to him by a registrar, he can proceed in accordance with the provisions of section 20, or he can prosecute, if he sees so fit; or if it appears to him that the instrument is properly stamped, or that it is not chargeable with stamp duty, he shall

certify accordingly by indorsement thereon, and return it. (Sections 22, 23, 24, Act VIII. 1859.)

15. *Q.* What are the points to be ascertained under section 29 of Act XVIII. 1869, before a penalty can be inflicted for executing an instrument on paper not duly stamped?

A. There are two distinct points to be looked at,—(1) whether the instrument belongs to the category on which duties are now imposed, and (2) whether the instrument is duly stamped. The test of the second point is whether it bears a sufficient stamp, according to the law in force in British India at the time of its execution.

16. *Q.* On the sale of movables or immovables, how is the consideration to be stated? And what is the penalty for failing to comply with the law in this matter?

A. The full consideration money directly or indirectly paid or secured, or agreed to be paid or secured, shall be truly set forth in words at length in the instrument. The penalty for not so stating the consideration is a fine on the purchaser and on the seller not exceeding 500 rupees, and also a fine of five times the amount of the excess of duty with which such instrument would have been chargeable under this Act if the full consideration money had been duly set forth in such instrument, in addition to the duty actually paid for the same. (Section 34, Act XVIII. 1869.)

17. *Q.* How are fines recoverable under the Act?

A. Outside the Presidency towns, in the manner prescribed by the Code of Criminal Procedure; within the local limits of the Presidency towns, in the manner prescribed by an Act regulating the police of such towns. (Section 37, Act XVIII. 1869.)

18. *Q.* What are the provisions as to awarding rewards to informers?

A. Whenever an offender is sentenced to pay a fine, the convicting magistrate may award any amount up to one-half such fine to be paid to the informer. (Section 38, Act XVIII. 1869.)

19. *Q.* If a party wishes to ascertain the duty chargeable on any instrument, how can he obtain adjudication of his doubt as to proper stamp?

A. If he takes it to the Collector, and pays a fee of five rupees, the Collector is bound to assess and charge the duty to which he thinks the instrument liable. (Section 39, Act XVIII. 1869.)

20. *Q.* Are the orders of a Collector open to revision? and is there any authority empowered under the Act to remit penalties?

A. Yes, on appeal or otherwise by the chief controlling revenue authority to which the Collector is subordinate. The chief controlling revenue authority has power, upon petition, to remit, wholly or in part, any penalty imposed under this Act. (Sections 40 and 42, Act XVIII. 1869.)

21. *Q.* What is the power of reference to the High Court under this Act? and what is the procedure of the High Court on cases so referred?

A. The chief controlling revenue authority may state any case coming before it under this Act, and refer such case, with its opinion thereon, to the local High Court. Every such case must be decided by *at least* three Judges of the High Court. In case of difference of opinion, the opinion of the majority prevails. The High Court has power to refer back the case for further information. The judgment of the High Court shall contain the grounds on which its decision is founded, a copy of which, under the seal of the Court and signature of the Registrar, shall be sent to the revenue authority by which the case was stated. (Section 41, Act XVIII. 1869.)

22. *Q.* To what cases exclusively do the rules under section 45, as to refund in case of useless or spoiled stamp paper, apply?

A. Exclusively to cases in which stamps have become unfit for the purpose for which they were procured, through some act or omission on the part of the persons possessing them, and not to cases in which stamps obtained for use under the old law have been rendered useless in consequence of the subsequent changes in the law.

23. *Q.* Within what period must the application for refund be made in cases mentioned in the preceding answer?

A. Within one year after purchase. (Section 45, Act XVIII. of 1869.)

24. *Q.* When is stamped paper held to be spoiled, or unfit for use within the meaning of section 45 (referred to in the two preceding questions)?

A. (1) When rendered unfit for use by accident, before its contents have been finally signed and executed; or (2) when it is rendered of no avail by some error in drawing up, or copying any writing on it, discovered prior to its being finally signed and executed;

(3) when, by reason of death or refusal of the party whose signature is necessary to effect the transaction, it remains incomplete; or (4) when, by refusal of any office or trust granted by a writing thereon, it has failed of the purpose intended; (5) when, by reason of failure, the transaction intended to be effected or evidenced cannot be effected or evidenced; or (6) when the transaction intended to be effected has been effected by some other instrument duly stamped; or (7) when, in the case of a negotiable instrument, such instrument is never brought into use; and (8) when, in the case of a bill of exchange other than a bill drawn in a set, it has not been presented for acceptance or payment. (Section 46, Act XVIII. 1869.)

25. *Q.* What powers has the Local Government for making rules for the sale of stamps? and what is the penalty for disobeying such rules?

A. The Local Government has to frame rules for the sale of stamps and stamped paper required by this Act and the Court Fees Act of 1870; also to determine by whom such sale is to be conducted, and fix the pay of such persons. The penalty for knowingly disobeying the rules is simple imprisonment up to six months, or fine up to 500 rupees, or both. (Section 48, Act XVIII. 1869, and section 34, Act VII. 1870.)

26. *Q.* Define "charter-party," "negotiable instrument," and "release."

A. "Charter-party" includes every instrument, except an agreement for the hire of a tug steamer, whereby a ship, or some principal part thereof, is let for the specified purposes of the charterer; "negotiable instrument" includes bills of exchange, promissory notes, and cheques; "release" includes every instrument whereby a person renounces a claim upon another, or against any specified property. (Section 3, clauses 7, 19, and 30, Act XVIII. 1869.)

27. *Q.* Define "power of attorney"; does such an instrument include "a proxy"? and give the meaning of the latter term "proxy."

A. "Power of attorney" includes every instrument (*except a proxy*) empowering a person to act in the stead of the person executing it; "proxy" means an instrument whereby a person authorizes another to vote for him at a meeting. (Section 3, clauses 24 and 29, Act XVIII. 1869.)

28. *Q.* With what fixed stamp duties are the following instruments severally chargeable—(1) bill of exchange for payment on demand of

amount exceeding twenty rupees? (2) proxy to vote at any one meeting of municipal commissioners? (3) bill of lading? (4) power of attorney to present for registration a single instrument? (5) notarial act? (6) instrument of gift of immovable property? (7) article of clerkship?

A. (1) One anna; (2) one anna. These duties may be denoted by an adhesive stamp. (3) Four annas; (4) eight annas; (5) two rupees; (6) sixteen rupees; and (7) five hundred rupees. (Schedule II. Act XVIII. 1869.)

29. *Q.* How is the amount of fee payable on the following suits to be computed—(1) for maintenance? (2) for movable property, other than money, having a market value?

A. (1) According to the value of the subject matter, such value to be deemed to be ten times the amount claimed, payable for one year; (2) according to such value at the date of presenting the plaint. (Section 7, clauses 2 and 3, Act VII. 1870.)

30. *Q.* What is the stamp duty chargeable on an application by a witness for return of document filed by him in obedience to a summons?

A. No duty is chargeable. (15 W. R. 237.)

31. *Q.* How is the amount of fee payable in—(1) a suit for the possession of land, forming an entire estate, or a definite share of an estate paying an annual revenue to Government, where the revenue is not permanently settled? and (2) in a similar suit where the land forms part of an estate paying revenue to Government, but *is not* a definite share of such estate, and is not separately assessed,—to be computed? And under which of those two classes are fees levied in cases of claims to seer land to be dealt with?

A. (1) To be computed at five times the revenue so payable. (Clause *b*, section 7, Act VII. 1870.) (2) The market value of the land. (Clause *d*, *id.*) Fees levied in cases of claims to seer lands to be dealt with under the latter clause, viz. *d*.

32. *Q.* What is the procedure laid down by the

Court Fees Act to be followed in a case of difference between the officer whose duty it is to see the fee paid, and any suitor or attorney?

A. If the difference arises in a High Court, the question must be referred to the taxing officer. If in a Court of Small Causes, the question must be referred to the clerk of the Court. (Section 5, Act VII. 1870.)

33. *Q.* How is the fee on a memorandum of appeal against an order relating to compensation for land taken up for public purposes to be computed?

A. According to the difference between the amount awarded and the amount claimed by the appellant. (Section 8, Act VII. 1870.)

34. *Q.* What is the rule as to calculating the fees on multifarious suits,—that is, suits embracing two or more distinct subjects?

A. The plaint, or memo. of appeal, shall be chargeable with *the aggregate* amount of the fees to which the plaint or memo. of appeal, in suits embracing separately each of such subjects, would be liable under this Act. (Section 17, Act VII. 1870.)

35. *Q.* How are fees under the Court Fees Act to be collected?

A. By stamps, impressed or adhesive, or partly impressed and partly adhesive. (Section 25, Act VII. 1870.)

36. *Q.* What is the amount of fee payable on an application or petition presented to any Civil, Criminal, or Revenue Court for the purpose of obtaining copy of any judgment?

A. One anna. (Schedule II., section 1, Act VII. 1870.)

37. *Q.* What is the exception to the rule, that a document for which a proper fee has not been paid cannot be filed in any court?

A. Whenever the filing or exhibition in a Criminal Court, in the opinion of the presiding Judge, is necessary to prevent a failure of justice. (Section 33, Act VII. 1870.)

38. *Q.* What are the provisions of the Act as to repayment of fees paid on petitions to Criminal

Courts? And how are fees ordered to be repaid to be recovered?

A. (i) When a petition contains a complaint or charge of a non-cognizable offence, the Criminal Court, if it convicts the accused, *shall, in addition* to the penalty imposed, order him to repay the complainant the fee paid on such petition.

(ii) When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any non-cognizable offence, and who has not already presented a petition on which a fee has been levied, and whose examination has been reduced to writing, and the accused is convicted.

(iii) When the complainant has paid fees for serving processes in either of the above-mentioned cases (cl. i. and ii. of this answer), and the accused is convicted.

All fees ordered to be repaid may be recovered as if they were fines imposed by the Court. (Sections 18 and 31, Act VII. 1870.)

39. *Q.* How is the amount of fee payable on the following suits to be computed:—(1) In suits to redeem? and (2) in suits to foreclose?

A. According to the principal money expressed to be secured by the instrument of mortgage. (Section 7, clause ix. Act VII. 1870.)

40. *Q.* On what points is the High Court required to make rules as to costs of processes?

A. On the following points:—Fees chargeable for serving and executing processes issued (1) by such Court, in its appellate jurisdiction, and by other Civil and Revenue Courts within its jurisdiction; (2) by the Criminal Courts within its jurisdiction, in non-cognizable cases; and, (3) remuneration of peons and all other persons employed by leave of a Court, in the service or execution of processes. (Section 20, Act VII. 1870.)

41. *Q.* What is the amount of fee payable on—(1) a plaint in a suit to establish a right of occupancy? (2) a plaint in a suit to obtain possession of a wife?

A. (1) Eight annas; (2) five rupees. (Schedule II. sections 5, 15, Act VII. 1870.)

42. *Q.* What is the procedure to be followed in suits for mesne profits or account, when amount decreed exceeds amount claimed?

A. Decree is not to be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits, or amount so decreed, has been paid to the proper officer. (Section 11, Act VII. 1870.)

43. *Q.* How is the amount of fee payable on the following suits to be computed :—(1) In suits for money? (2) to enforce a right to share in joint family property? (3) in a suit for an injunction?

A. (1) According to the amount claimed; (2) and (3) according to amount at which the relief sought was valued in the plaint or memo. of appeal. (Section 7, clauses 1 and 4, Act VII. 1870.)

44. *Q.* With whom does the decision of questions of valuation of fee chargeable on a plaint presented to a Court other than a High Court or Presidency Small Cause Court, rest?

A. With the Court in which such plaint or memorandum is filed, and such decision is final as between the parties to the suit. (Section 12, Act VII. 1870.)

45. *Q.* What is the fee to be paid on an application for—(1) leave to sue as a pauper? (2) leave to appeal as a pauper? (*a*) when presented to a District Court? (*b*) when presented to a High Court? (3) on a caveat?

A. (1) Eight annas; (2) (*a*) one rupee, (*b*) two rupees; (3) five rupees. (Schedule II. sections 2, 3, 12, Act VII. 1870.)

46. *Q.* How is the amount of fee payable on the following suits to be computed :—(1) In suits to enforce a right of pre-emption? (2) in suits for the interest of an assignee of land revenue? and (3) in suits to set aside an attachment?

A. (1) According to the value of the land, house, or garden, in respect of which the right is claimed. (2) Fifteen times his net profits as such for the year next before the date of presenting the plaint. (3) According to the amount for which the land or interest was attached, provided that, where such an amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest. (Section 7, clauses 6, 7, 8, Act VII. 1870.)

47. *Q.* What is the stamp duty chargeable on memorandum of appeal, when the appeal is not from an order rejecting a plaint, and is presented—(1) to any Civil Court other than a High Court? and (2) to a High Court?

A. (1) Eight annas; (2) two rupees. (Schedule II. section 11, Act VII. 1870.)

48. *Q.* What is the fee to be paid on a plaint or memorandum of appeal in each of the following suits:—(1) To alter or cancel any entry in a register of the names of proprietors of revenue-paying estates? (2) to set aside an award? and (3) suits where it is not possible to estimate at a money value the subject matter of dispute, and which is not otherwise provided for by this Act?

A. The proper fee in each case, ten rupees. (Schedule II. section 17, clauses 2, 4, 6, Act VII. 1870.)

CHAPTER XII.

MORTGAGE.

1. *Q.* Define a mortgage.

A. A mortgage may be defined as a pledge for securing a debt of lands of which the debtor and those claiming under him remain either the actual owners, or in a position to assert their rights as actual owners until debarred by judicial sentence, or by legislative enactment. (Mac. Mort. 1) "Mortgage deed" includes every instrument evidencing a pledge of property for securing the payment of money. (Sec. 3, cl. 18, Act XVIII. 1869.) "Rahn" literally signifies to detain a thing on any account whatever. In the language of the law it means the detention of a thing on account of a claim which may be answered by means of that thing, as in the case of debt. (1 Lyon, L. I. VIII. 130.)

2. *Q.* Did the Mahomedan or Hindu Law make any distinction between a mortgage of land and pledge of other property? And what was originally the essence of the security?

A. No, no distinction. Under Mahomedan law, possession or seisin of the thing pledged was in all cases the essence of the security. Hypothecation, the giving a lien over a thing without actual possession of it, seems to have been originally unknown. Under Hindu law, actual possession was probably originally essential to the validity of a mortgage, although there is little doubt that hypothecation existed in the country from a remote period. The question as to the security for the delivery of possession in the Mofussil was put beyond a doubt by the Regulations, and after a short time the Supreme Court recognized the validity of, and gave effect to Hindu mortgages, whether accompanied by possession or not. (Mac. Mort. Intro. 1—9.)

3. *Q.* What are the three pure forms of mortgage? And give their subdivisions, any of them that are subdivided.

A. (1) The usufructuary mortgage, subdivided as follows:—
(*a*) Mortgages of the whole right and estate of the mortgagor.
(*b*) Mortgages of his right and estate for a term of years.
(2) The simple mortgage; (3) the mortgage by conditional sale, kut-kabala, or bye-bil-wufa. (Mac. Mort. 10—15.)

4. *Q.* Explain what (1) the usufructuary; (2) the simple; and (3) the kut-kabala or bye-bil-wufa mortgages are.

A. (1) When a man borrows money, and gives up his land to the lender, who (unless his debt is paid off by the mortgagor) may retain possession until he has, from the rents and profits of the land, repaid himself the interest, or, according as the terms in the agreement in each case may be, the principal and interest of the sum advanced by him; (2) where the borrower, binding himself personally for the repayment of a loan with interest, pledges his land as a collateral security for such repayment; (3) is that in which the borrower, not making himself personally liable for repayment of the loan, covenants that on default of payment of principal and interest on a certain date, the land pledged shall pass to the mortgagee. (Mac. Mort. 3rd ed. 12.)

5. *Q.* Name and explain the two kinds of mortgages arising out of *the combination* of the three pure forms of mortgage.

A. (1) The "simple usufructuary mortgage," that in which, though the property is only collaterally pledged, as in the case of a pure simple mortgage, the mortgagee is permitted to have the usufruct of it. (2) The "bye-bil-wufa, or kut-kabala usufructuary," where the mortgagee, by conditional sale, has the usufruct of the property, either by being merely put in possession, and allowed to receive the rents and profits, or by having a lease given to him by the mortgagor. (Mac. Mort. 2nd ed. 14.)

6. *Q.* Is a mortgagee remaining in possession after the mortgage has been satisfied "a trustee"?

A. No. (Section 3, Act IX. 1871.)

7. *Q.* In the following suits—(1) by a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee; (2) to recover possession of immovable property mortgaged, and afterwards purchased from the mortgagee in good faith, and for value; and (3) suit instituted in a Court not established by Royal

Charter by a mortgagee for possession of immovable property : what is the period of limitation in each case ? And from when does such period begin to run ?

A. (1) Three years. Period begins to run from date of receipt; (2) twelve years. Period runs from the date of the purchase ; (3) twelve years. Period runs from when the mortgagee is first entitled to possession. (Act IX. 1871, Schedule II. 105, 134, and 135.)

8. *Q.* Who are capable of mortgaging, and what are the exceptions to the rule ?

A. The right to mortgage is *primâ facie* incident to the right of property, and co-extensive with it. The exceptions are in the cases of lunatics and minors. Persons whose rights are of a limited or qualified nature cannot do any valid act in excess of these rights. (Mac. Mort. 13.)

9. *Q.* Although minors are an exception to the rule, is there no way by which their lands can be pledged as security for a debt ?

A. Yes. A mortgage by a minor's legal guardian is valid if made *bonâ fide*, and for the benefit of the minor, or of his property. (Mac. Mort. 13.)

10. *Q.* What was the point decided *in re Hunooman-persaud Panday ?*

A. That a guardian mortgaging his ward's property ought to do so in the character of guardian, and not as proprietor. But terms such as "proprietor" and "heir" may occur in pleadings, or deeds, or documentary proofs, so that the mere adherence to these titles can be so construed as to raise the conclusion of an assumption of ownership in the sense of beneficial enjoyment derogatory to the heir's rights ; nevertheless (say the Privy Council) "they ought not to be so construed unless they were so intended." The whole context of all the documents and pleadings must be taken into consideration, and the construction proceed on every part, and not on portions merely. An *inaccurate* or *erroneous description*, as "heir" or "proprietor," is not sufficient to invalidate a mortgage by a guardian.

This power of the minor's guardian or manager to mortgage the minor's estate is under the Hindu law a limited and qualified power. It can only be exercised—(1) in case of need, or (2) for the benefit of the estate. (7 S. D. A. N. W. P. 21 ; 6 M. I. A. 393.)

11. *Q.* What is the degree to which the *onus* is thrown on the mortgagee of proving that the charge was created for the benefit of the minor, and from necessity?

A. The lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can that the manager is acting for the benefit of the estate. A *bonâ fide* creditor will not suffer when he has acted honestly and with due caution, but is himself deceived. But if he acts *malâ fide* he cannot take advantage of his own wrong to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause. (Mac. Mort. 16.)

12. *Q.* If a person, after attaining his majority, questions a sale of his property made by his guardian during his minority, what is the *onus* on the purchaser?

A. If he upholds the purchase, he must show not only—(1) that the guardian had the power to sell, or that the purchaser reasonably supposed he had the power; but further, (2) that the whole transaction, so far as it regarded the purchaser, was *bonâ fide.* (9. W. R. 297; 6 W. R. 262.)

13. *Q.* A, the guardian of a minor, B, borrows moneys on mortgage of B's estates, to carry on litigation. B, on coming of age, refuses to ratify A's acts in the matter, and the Court considers that the litigation was excessive, and not at all for the minor's benefit; what happens?

A. The moneys will be considered as having been obtained by the guardian on his own personal responsibility. (S. D. A. 1853, p. 531.)

14. *Q.* Name some alienations which may be ranked as "alienations from necessity."

A. (1) Alienations made for the support of the family; (2) for services of religion; (3) for the payment of Government revenue; (4) for any "pressing need." (Mac. Mort. 20.)

15. *Q.* If a Hindu widow alienate for other than allowable causes, property inherited from her husband, does such act of hers destroy her right, or vest the property in the reversioner? And what is the reversioner's remedy?

A. No, it does not destroy her right, or vest the property in the reversioner. But the reversioner, without waiting for her death, may sue for a declaratory decree that the alienation is not binding except for her life, and also to prevent waste. (Mac. Mort. 28.)

16. *Q.* If there is any necessity, such as is warranted by Hindu law, for a sale of part of the property, and a widow sells a larger portion of the estate than is necessary, is such sale void as against the reversioners?

A. Not absolutely void,—they can set it aside on paying that amount which the widow was entitled to raise, with interest. (9 W. R. 108; Mac. Mort. 29.)

17. *Q.* What is the principle which rules the temporary alienations of "wuqf" property?

A. Those alienations only which fall within the scope and spirit of the endowment are to be supported. (5 W. R. 158.) A mortgage of lands devoted to religious purposes, or the produce of such lands, whether by Mahomedans or Hindus, is invalid; but it does not follow therefore that the temporary alienation of "wuqf" lands is illegal: if it is to raise money for repairs, it appears that such temporary alienation is legal. (Mac. Mort. 33; Mac. M. L. 328.)

18. *Q.* In the case of a mortgage by conditional sale, when does the right of pre-emption arise?

A. Not until the sale is made absolute. (2 W. R. F. B. R. 215; 5 W. R. 76.)

19. *Q.* How may parties enter into a contract of mortgage?

A. Their agreement may be either verbal or in writing. The former is seldom met with. (Mac. Mort. 35.) Contracts of pawn are established by declaration and acceptance, and are rendered perfect and complete by taking possession of the pledge. (1 Lyon, L. I. viii. 131.)

20. *Q.* What should a mortgage-deed set forth?

A. Shortly and distinctly,—(1) all the material points of the agreement; (2) state accurately the consideration given; (3) the locality and description of the property pledged; (4) the nature of the mortgage; (5) the length of time it is to remain in force; and (6) any other conditions which the parties may have agreed upon, together with the date of the execution of the deed; and (7) the stipulations as to payment of interest should be accurate and clear. (Mac. Mort. 36.)

21. *Q.* Can the terms of a written deed be varied or modified by verbal agreement?

A. No. Parol evidence is not admissible to vary or alter a written contract in cases where there is no fraud or mistake, and in which the parties intend to express in writing that which their words import; *e.g.*, where there is a written bill of sale, absolute on the face of it, a contemporaneous verbal agreement that the transaction shall be one of mortgage only is not admissible. (5 W. R. 68, 76; F. B. R.)

22. *Q.* Under any circumstances can a prior written contract be varied by a subsequent verbal one?

A. Yes, in cases in which the law does not require the contract to be in writing. (Mac. Mort. 38.)

23. *Q.* What is the rule according to which contracts are to be dealt with and deeds construed?

A. According to the *real intention* of the contracting parties disclosed by the transaction. (6 M. I. A. 393.)

24. *Q.* Lands were conditionally purchased by A, who paid down a certain sum of money, and agreed to pay a further sum seven years afterward; upon making the latter payments, A was to be put in possession, and the borrowers were within ten years from that date to pay off the whole loan and redeem their lands. A never advanced more than the first sum, and he never got possession; what was the nature of this transaction?

A. The money A advanced was a simple debt, for which there was no lien on the lands. The transaction did not amount to a mortgage. (Mac. Mort. 42.)

25. *Q.* What should be clearly stated in a mortgage of an usufructuary nature? And on what does the personal liability of the mortgagor in such a mortgage depend?

A. It should be stated—(1) Whether the profits are to be taken in lieu of interest only, or (2) whether both principal and interest are to be recovered from them; because, in the latter case, the pledger is not personally liable (except under particular circumstances), and the mortgagee must look to the land alone for the payment of his debt and the interest thereon. The personal liability

of the mortgagor in a usufructuary mortgage depends wholly on the terms of the contract. (Mac. Mort. 43.)

26. *Q.* Can a mortgagee on default by a mortgagor sell the mortgaged property, and repay himself, without making any application to the Court?

A. No; and all conditions are null and void which are to this effect. (Mac. Mort. 45.) Such a power is of no effect under the existing law. Such a power exists in England, and is found in practice to be very useful.

27. *Q.* Can interest be contracted for at any rate on which the parties choose to agree?

A. Yes. (Mac. Mort. 47.) Act XXVIII. 1855, did not repeal the Hindu law as to interest. Such rate is governed by the strict rules of Hindu law, as originally laid down by Menu and other law-givers. (3 B. L. R. 130.)

28. *Q.* When a deed of mortgage is silent as to interest, is payment of the bare principal within the year sufficient to bar foreclosure?

A. Yes. (Radhanath Sein *v.* Bungo Chunder Sein, W. R. 1864, 157.)

29. *Q.* On the execution of a mortgage, in whom does the proprietary right remain?

A. In the mortgagor, even though the possessory right may have passed to the mortgagee. (Mac. Mort. 3rd ed. 99.)

30. *Q.* What is the position of the party in possession?

A. That of "a trustee." (Mac. Mort. 3rd ed. 99.)

31. *Q.* Is a mortgagee in possession entitled to "dhakil kharig"?

A. Yes.

32. *Q.* What rights vest in the mortgagee—(1) in a pure usufructuary mortgage? (2) in a simple mortgage? and (3) in mortgages by conditional sale?

A. (1) Only the possessory right; (2) in simple mortgages, he has no proprietary or possessory right, and he cannot appear at a revenue settlement, either as a claimant or in any other capacity; (3) the proprietary, and also the possessory, vest in him, when the term fixed

for the repayment of the loan has elapsed, and the process of foreclosure been completed,—but not till then. (Mac. Mort. 3rd ed. 101.)

33. *Q.* How does a mortgage of land paying revenue to Government affect the Government revenue?

A. The Government revenue is a charge upon the land, out of which it is payable, which takes precedence of all other claims; consequently, a mortgage does not in fact pledge anything more than the receipts in excess of the revenue due in respect of the lands mortgaged. (Mac. Mort. 3rd ed. 103.)

34. *Q.* In the event of an estate being about to be sold for arrears of Government revenue which the mortgagor has failed to pay, can the mortgagee pay the arrears and recover it from the mortgagor?

A. Yes; the mortgagee may deposit the amount due, and he may recover the same from the mortgagor, with interest. (Mac. Mort. 3rd ed. 105.)

35. *Q.* Is there any legal impediment to the transfer by a creditor to a third person of a sum of money due to him without the consent of the person indebted?

A. No; there is no such impediment, and the transferree may resort to the same measures for the recovery of the amount of the debt as the original creditor might himself have adopted had no transfer taken place. (Mac. Mort. 3rd ed. 111.)

36. *Q.* Can a mortgagor transfer his interests, in opposition to an express stipulation to the contrary?

A. No. A transfer made under such circumstances is *ipso facto* void, or at least voidable. (Mac. Mort. 3rd ed. 114.)

37. *Q.* The proprietor of a talook mortgaged a two annas share to B. Subsequently he sold a five annas share of the same talook to C, with whom he made a *butwarra*, under which a certain village was registered by the Revenue authorities in C's name, and as representing his five annas

share. Did B retain his lien over the two annas share in the village so made over to C?

A. No. On the completion of the *butwarra* B lost all lien over the two annas share of the village made over to C; his lien thenceforth was limited to such a share of the remainder of the talook as corresponded to a two annas share of the *whole* talook as it originally stood. (Mac. Mort. 3rd ed. 110.)

38. *Q.* A executes a mortgage subsequently to attachment, by proclamation regularly issued from a competent Court. Is such a mortgage valid?

A. No; it is invalid.

39. *Q.* Name any circumstance that would entitle the mortgagor at any time to have the mortgage cancelled, and to pay off the debt?

A. Any deviation by the mortgagee from the terms of his contract. (Mac. Mort. 3rd ed. 125.)

40. *Q.* Are there any cases cited by Macpherson, as showing that a mortgage may be in abeyance for a time, without its validity being affected?

A. Yes; *e.g.*, where a mortgage is of a usufructuary nature, and the Collector comes in and farms the land, not on account of any fault or mismanagement on the part of the mortgagee, the mortgage is, as respects the land, in abeyance during the Collector's possession, but will revive in full force when he gives it up again. So, if a mortgagee purchases the remaining rights of the mortgagor, and his purchase is set aside on the ground of the mortgagor having previously disposed of those rights, the mortgagee's title, *as mortgagee*, will revive in full force. (Mac. Mort. 3rd ed. 126.)

41. *Q.* (*a*) Who are entitled to redeem a mortgage? (*b*) And how long does such right exist; that is, what is the limitation after which redemption is impossible?

A. (*a*) The mortgagor, his heirs and assigns, to whom he has transferred his *whole* interest, that is to say, purchasers *out and out* of his equity of redemption (1853, S. D. A. 859; 9 N. W. P. 371, 421); a third party to whom the right has been expressly reserved in the mortgage-deed is entitled to redeem (3 N. W. P. 187); as regards simple mortgages, a mortgagee, by conditional sale, can redeem one who has a prior simple mortgage of the same property (1859, S. D. A. 1567); two or more persons, being co-sharers, join-

ing in a common mortgage, any one of them may redeem the property mortgaged, on payment of the whole sum. And so may the purchaser of the rights of one of several such mortgagors (6 N. W. P. 328). (*b*) The right exists only up to the time of the lands being sold, under decree of Court in satisfaction of the mortgagee's claim; or where the mortgage is by way of conditional sale, until the lapse of one year from the date of issue of a notice from the mortgagee, calling on the mortgagor, or his representative, to pay off the debt, or to be foreclosed. There can be no redemption after foreclosure has taken place. (Mac. Mort. 3rd ed. 127—142.)

42. *Q.* What must the tender or deposit for redemption be made in?

A. Money, cash; the lender is not bound to accept a bond or bill instead of cash. However, if he does accept such a mode of payment, he cannot afterwards repudiate his acceptance. (Mac. Mort. 148.)

43. *Q.* Is any particular ceremony required on the execution of a deed?

A. No; but it should be executed in the presence of, at least, two witnesses. (Mac. Mort. 3rd ed. 70.)

44. *Q.* When is the registration of a mortgage compulsory? and when optional?

A. Mortgages for one hundred rupees, or upwards, *must* be registered. When they are for less than one hundred rupees, registration is optional. (Section 17, clause 2, and section 18, clause 1, Act VIII. 1871.)

45. *Q.* Does the law give any preference to registered over unregistered mortgages?

A. Registered documents relating to land of which registration is optional take effect against unregistered documents. This includes mortgages for less than one hundred rupees, the registration of which is optional: *vide* answer to last preceding question. (Section 50, Act VIII. 1871.)

46. *Q.* In the absence of an agreement to the contrary, by whom is the expense of providing the proper stamp for the mortgage-deed to be borne?

A. The mortgagor. (Section 6, clause 4, Act XVIII. 1869.)

47. *Q.* What is the requisite stamp for a mortgage-deed, when—(1) possession of the property comprised therein is not given by the mortgagor at

the time of execution? (2) when possession of the property comprised in the deed is given to the mortgagor at the time of execution?

	RS.	A.	P.
A. (1) When such amount does not exceed 25 rupees	0	2	0
When such amount exceeds 25 rupees, but does not exceed 50 rupees	0	4	0
When such amount exceeds 50 rupees, but does not exceed 100 rupees	0	8	0
For every 100 rupees, or part thereof, in excess of 100 rupees, up to 1,000 rupees	0	8	0
For every 500 rupees, or part thereof, in excess of 1,000, up to 10,000 rupees	2	8	0
For every 1,000 rupees, or part thereof, in excess of 10,000 rupees, up to 30,000 rupees... ...	2	8	0
For every 10,000 rupees, or part thereof, in excess of 30,000 rupees	12	8	0
(2) When the amount paid or secured does not exceed 50 rupees	0	8	0
When such amount exceeds 50 rupees, but does not exceed 100 rupees	1	0	0
For every 100 rupees, or part thereof, in excess of 100, up to 1,000 rupees	1	0	0
For every 500 rupees, or part thereof, in excess of 10,000 rupees	5	0	0
For every 1,000 rupees, or part thereof, in excess of 10,000 rupees, up to 30,000 rupees ...	5	0	0
For every 10,000 rupees, or part thereof, in excess of 30,000 rupees, up to 100,000 rupees ...	50	0	0
For every 20,000 rupees, or part thereof, in excess of 100,000 rupees	75	0	0

(Schedule I. Nos. 10 and 16, Act XVIII. 1869.)

48. *Q.* What is the proper stamp for a mortgage-deed executed as a collateral security?

A. Two rupees. (Schedule II., No. 20, Act XVIII. 1869.)

49. *Q.* When any property is sold and conveyed subject to any mortgage, what is such deemed as?

A. As purchase-money. (Section 34 (*b*), Act XVIII. 1869.)

50. *Q.* Can a mortgagor by contract deprive himself of the right to compel the mortgagee in possession to account for the profits?

A. Yes. Since the repeal of the usury laws, a mortgagor and

mortgagee may make what contracts they please with reference to the profits of the mortgaged estate. (6 W. R. 283.)

51. *Q.* What is the procedure to be followed by the mortgagor in redeeming a mortgage by conditional sale, bye-bil-wufa, or kut-kabala, when the mortgagee has not had possession?

A. The mortgagor may redeem, by tendering to the mortgagee or depositing in Court, the principal sum lent, with the stipulated interest thereon (not exceeding the rate of twelve per cent., per annum, if the contract was entered into before Act XXVIII. of 1855 came into force); or if interest be payable and no rate has been stipulated for, with interest at the rate of twelve per cent., or by tendering or depositing any less sum which is the total amount due for principal and interest. But if such smaller sum only is deposited, the mortgage will not be considered as redeemed, until it is admitted or established that that sum covers the full amount due to the mortgagee. (Mac. Mort. 135.)

52. *Q.* Is there any difference in the steps to be taken in redeeming a mortgage by conditional sale when the mortgagee *has had possession?*

A. The steps to be taken in both cases,—that mentioned in this question and that in the last preceding question,—are the same. There is this difference, however, between the two kinds of mortgage, that when the mortgagee has had the usufruct, the mortgagor need never deposit more than the principal sum borrowed by him, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during the period he has been in possession. And if the mortgagor deposits a sum less than that required by law, that is to say, less than the principal, alleging that the sum so deposited is the total amount due to the lender for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received, and the usual notice given to the mortgagee; and if, on investigation, it appears that the amount so deposited is the total amount due, the right of redemption will have been preserved to the mortgagor, and he will be entitled to recover his lands. (Mac. Mort. 137.)

53. *Q.* What was the point laid down *in re Forbes* v. *Ameeroonissa*, regarding the necessity of the mortgagee's accounting to the mortgagor?

A. This necessity arises, and need only arise,—*Firstly*, when the mortgagor has deposited the principal, leaving the question of interest to be settled on an adjustment of the accounts; *secondly*, when he has deposited all that he admits or alleges to be due;

and *thirdly*, when he pleads and undertakes to prove, that the whole of the principal and interest has been liquidated by the usufruct of the property. (10 M. I., Ap. 340; 5 W. R. P. C. 47.)

54. *Q.* What must a mortgagor, seeking an account from his mortgagee, and to redeem, aver in his plaint?

A. That the principal sum, with interest, has been tendered, or been realized from the usufruct or otherwise. (Mac. Mort. 143.)

55. *Q.* State the principle on which the doctrine of foreclosure is based.

A. The mortgage debt being the principal, and the land pledged being merely a security, the mortgagor, notwithstanding his breach of condition, still continues relievable from the strict letter of his contract, on payment of principal, interest, and costs. But this, except in the case of pure usufructuary mortgages, is only in the event of the mortgagee not coming forward and seeking the assistance of the law to enable him to enforce his security, which assistance will be granted to him, in order that he may not remain subject to a perpetual account, or be deprived for ever of the money advanced by him. On this principle rests the doctrine of foreclosure. (Mac. Mort. 146.)

56. *Q.* In what mortgages can foreclosure occur?

A. In mortgages by bye-bil-wufa, kut-kabala, or conditional sale. In pure usufructuary mortgages, including those by lease, nothing more than a temporary enjoyment of the land is given to the mortgagee, liable to be put an end to at any moment (unless the mortgagor is barred under Act XIV. 1859.) So much of this section as relates to the limitation of suits is still in force, and was not repealed by Act IX. of 1871 (but specially saved by the first schedule to that Act) on the mortgage debt being cleared off. (Mac. Mort. 163.)

57. *Q.* In the case of a simple mortgage, when may the mortgagee bring his suit? And what is such a suit deemed to be brought for?

A. At any time (except where the ordinary limitation rules intervene) after the debt has become due according to the terms of the agreement. The suit is brought for the recovery of the sum lent, with interest and costs, and for *a declaration* of the mortgagee's lien on the land. (Mac. Mort. 164.)

58. *Q.* A obtained a decree on a simple mortgage

bond. B also obtained a decree on a similar bond, and sold the lands in execution; but B's mortgage was subsequent to A's. Were A's rights prejudiced by the sale, by the fact of A's not having taken out process of attachment against the lands, and not having given intimation of his mortgage at the time of B's sale?

A. A's rights were not prejudiced by the sale; he was entitled to have the property resold in execution of his decree, free from all subsequent incumbrances. A's silence at the time of B's sale, and his having taken out no process of attachment himself on his decree, was *held* not to injure his rights. (Mac. Mort. 166.) A was not bound to warn B that he had a previous lien; it is the duty of the borrower to give all information to the lender. If A stood by while the borrower was negotiating a loan with B, and kept silence, though he knew the borrower had again pledged his property to B, such silence could not be construed into a waiver of his claim, or in any way affect his rights. (Luchmun Suhai Chowdhry *v.* Gujraj Jha, 4 W. R. 45.)

59. *Q.* Can a mortgagee himself become the purchaser of the land for the sale of which he has obtained an order? Is there any difference as regards such a transaction between the Indian and English law?

A. Yes, so long as no case of collusion or fraud is made out against him. In England, this is not so. There, a mortgagee can become the purchaser only by special leave of the Court. (Mac. Mort. 169.)

60. *Q.* What is the principle of the English and Hindu law as to the mortgagor's right to redeem?

A. The same principle exists in both, that the right to the mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclosure; and, therefore, a suit for redemption cannot be brought before the time fixed for the payment of the mortgage-money. (I. D. 533.)

61. *Q.* In a case of mortgage by bye-bil-wufa, kut-kabala, or conditional sale, what are the necessary forms to be gone through before foreclosure can be obtained? Give the law on this subject.

A. The first thing to be done by the mortgagee is to demand payment of what is due on the mortgage from the borrower or his representative. If the application is unsuccessful, he must, by him-

self or an authorized vakeel, apply for that purpose by a written petition to the Zillah Judge. The Judge should cause the mortgagor to be furnished with a copy of the application, and notify to him that if he does not redeem the property within one year *from the date of the notification*, the mortgage will be finally foreclosed, and the conditional sale made absolute. The one year's grace must be calculated from the "date of the notification," and this notification is to bear date on the day on which it is actually issued, *i. e.* on the day on which it is put into the hands of the Court peon for service, and not on the day on which the order for its issue is passed; but in computing the year, the date of issue is to be excluded. To this rule, that the year is calculated from the date of issue, there is *no exception*, and no local custom can prevail against it.

Personal service on the mortgagor of the notice of foreclosure is not absolutely necessary, if he, or his representative, cannot be found, and is really *bonâ fide* absent, and ignorant of the issue of the notice; foreclosure can be completed in his absence, if the mortgagee has done all that could be done to effect service. (Mac. Mort. 170—185.)

62. *Q.* What is it necessary that the mortgagor deposit within this year of grace?

A. The principal debt and interest due. It is not essential that costs incurred by the mortgagee in the matter of the mortgage should also be deposited. (Mac. Mort. 185.)

63. *Q.* State briefly the general principle of the Regulations as to the mortgagor's right of redemption.

A. The general principle is this, that if anything be due on the mortgage, and the mortgagor makes an insufficient deposit—and *à fortiori* if he makes no deposit at all—the right of redemption is gone at the end of the year of grace. (Forbes *v.* Ameeroonissa, 10 M. I. Ap. 340; 5 W. R. P. C. 47.)

64. *Q.* In order to convert a conditional into an absolute sale, is a written agreement absolutely necessary?

A. No, not even though the conditional sale was in writing: anything which proves that the mortgagor has agreed to the sale being made absolute is sufficient. (Mac. Mort. 190.)

65. *Q.* If the mortgagee takes the money out of court, can he afterwards plead that such amount was deposited after expiry of the year of grace?

A. No; he cannot draw back after he has once taken the money out of court, on the above or any other ground. (Mac. Mort. 191.)

66. *Q.* State briefly the nature of the Judge's functions in proceedings taken for foreclosure.

A. They are twofold. (1) Up to a certain point, they are purely *ministerial*, he having merely, without instituting any inquiries into the merits of the case, or expressing any opinion as to them, to issue, on the application of the parties, certain fixed notices and orders to receive and pay over to the mortgagee, if desirous of taking it, whatever amount may be paid into court by the mortgagor; or, if the mortgagee should refuse to accept the same, to restore it to the mortgagor, and to receive proof of service of the several notices. It is his duty strictly to confine himself to recording simply *the facts* which have occurred during the summary process, and to abstain from expressing any judicial opinion whatever on the proceedings. (2) His functions are *judicial* so far as the mere issue and service of the notice are concerned, for he is to inquire and record judicially that all has been done properly. (Mac. Mort. 192.)

67. *Q.* To succeed in his suit for foreclosure, what is it necessary for the mortgagee to prove?

A. (1) That all the legal formalities have been observed; (2) that notice was issued from the proper Court; (3) that it was duly served on the right parties; (4) that the period of a year from the issue of the notice has elapsed; and (5) that no sufficient tender or deposit was made before the expiration of the year of grace.

68. *Q.* When does the right of pre-emption in mortgaged property arise?

A. Not until the mortgagor's right of property has been completely extinguished. Any one who has the right of pre-emption may assert it when the conditional sale comes to be made absolute. (2 W. R. 215, Full Bench Ruling.)

69. *Q.* What is the law applied to mortgages by the High Court as a Court of ordinary Civil Jurisdiction?

A. Generally the English law. (Mac. Mort. 218.)

70. *Q.* What is the fundamental principle governing mortgages under both the systems—(1) Mofussil? and (2) High Court?

A. The fundamental principle under both systems, is that the mortgage security is to be a security for principal, interest, and cost only; and in whatever form it is taken, so far as it is a mortgage security, it will not be allowed to have any other effect. (Skinner *v.* Sandyal, *per* Sir Lawrence Peel, C.J.)

71. *Q.* What is the jurisdiction of the High Court

as a Court of original Civil Jurisdiction in suits relating to land? And are suits for foreclosure and redemption suits for land?

A. The High Court, in the exercise of its ordinary original civil jurisdiction, can only entertain "suits for land or other immovable property," if such land or property shall be situated, either wholly or in part, within the local limits of the ordinary original jurisdiction of the High Court. (Section 12 of the Letters Patent.) If the lands lie only partly within the local limits of the High Court's jurisdiction, the leave of the Court must be obtained before the suit is instituted. (1 Ind. Jur. 218.) Suits for foreclosure and redemption are suits for land. (1 Ind. Jur. 40, 319.)

72. *Q.* When a case is removed from a Mofussil Court and tried by the High Court in the exercise of its extraordinary original Civil Jurisdiction, what is the law to be applied to such a case?

A. The law to be applied to the case is that which would have been applied to it by any local Court having jurisdiction therein. (Mac. Mort. 228.)

73. *Q.* What is the relief to which a mortgagee of lands, whether within or without the local limits of Calcutta, is entitled on a mortgage not in the English form, but in one of the forms in common use in the Mofussil?

A. The intention of the parties, as evidenced by their contract, is to be followed; or if the intention cannot be gathered from the terms of the agreement, the plaintiff is allowed to make his election. (Mac. Mort. 228.)

74. *Q.* When the terms of a contract imply that the mortgagee is to look to the land alone for payment, can he bring an action for the recovery of the money debt on the expiration of the limited time?

A. Yes; the mortgage will be treated merely as evidence of the original loan. (Mac. Mort. 230.)

75. *Q.* Can a High Court decree obtained by a first mortgagee against the mortgagor be put in force against a second mortgagee in possession?

A. No; such a decree is not binding on and cannot be put in force against a second mortgagee in possession, he not having been made a party to the suit in the High Court. (Mac. Mort. 232.)

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THE END.

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